

**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 the rights of persons with disabilities; 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, sexual exploitation and sexual abuse of children; 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 ZAF 2/2023  
(Please use this reference in your reply)

12 May 2023

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 the rights of persons with disabilities; 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, sexual exploitation and sexual abuse of children; 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, 51/8, 44/10, 45/3, 44/5, 49/13, 51/21, 52/26, 52/7, 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 in respect of five nationals of South Africa: [REDACTED]. They are all detained in Roj camp in the North-East region of the Syrian Arab Republic. We express serious concern that they are all arbitrarily detained, that [REDACTED] suffers from serious and deteriorating chronic health issues and is in urgent need of access to medical assistance. This assistance is not available to her in the camp. We are further deeply concerned that [REDACTED] is at high risk of forcible separation from his family and transfer to a different detention facility, where he faces a risk of enforced disappearance and incommunicado detention in life-threatening conditions. We are also concerned at the risk of trafficking in persons and the lack of identification procedures despite allegations of forced marriage. In this connection, we note that you have already received a communication on this issue ZAF 1/2021 on 25 January 2021 and we would like to thank you for your reply dated 14 April 2021. We however retain our concerns and encourage you Excellency's Government to further consider the allegations below.

According to the information received:

██████████ was born on 5 April 1968 in South Africa. She is a mother to three adult children who are living in South Africa. ██████████ is a South African national born on 7 January 1987. Initially a friend of ██████████ daughter, she married ██████████ brother, 10 years her senior, when she was 16 years old. She had four children with him before she was 26 years old - three are still alive: ██████████, born on 8 February 2006, ██████████ born on 19 July 2007, and ██████████ born on 26 February 2009. All five individuals are South African nationals. They are all currently detained in al-Roj camp, in North-East Syria.

In August 2013, ██████████ older brother was murdered in a mosque in South Africa. While her family was preoccupied with the ensuing legal proceedings, ██████████ youngest brother, his wife, ██████████, and their four young children went missing. It was not until December 2014 that ██████████ found out that they had travelled to Syria with the help of another family in their extended community. Leaving behind her children, most of whom were still teenagers, ██████████ travelled to Syria in early 2015 to bring them, her brother and his family back to South Africa, or at least to bring back ██████████ and her children.

Although ██████████ believed she could travel in and out of Syria easily, once in the Islamic State of Iraq and the Levant (hereafter ISIL) territory, she realised she could not leave. She found her brother and lived with him for a short while after she arrived; however, he threw her out shortly after and refused to let his family return to South Africa. As ██████████ refused to live in a *mudafa* (house where, under ISIL, unmarried women were held until they agreed to marry), she lived in the streets, supporting herself by cleaning people's homes and caring for children. In 2016, ██████████ was forced to marry, but her husband ejected her from their house in 2017. Sent to a *mudafa*, she was able to avoid remarriage by cooking and cleaning for the woman in charge of the *mudafa*.

██████████ spent her entire time in ISIL territory trying to go back to South Africa. At the end of 2018, she managed to escape but was captured and transferred by the *de facto* authorities to the Al-Hol camp. ██████████ and her three surviving children (one passed away in unknown circumstances in Syria) also arrived at the Al-Hol camp around the same time and they lived in tents next to each other. They lived in "absolute terror" and refused to allow the children to venture far from them, fearing for their safety. As ██████████ has also taken care of several orphans, she became known as the "mother of disbelievers", which put her own safety at risk. On one occasion, other women who objected to ██████████ actions physically took a child from her.

In the fall of 2019, both women and the children were transferred by the *de facto* authorities to the Al-Roj camp but were arbitrarily placed in a different section

of the camp. They now have very limited contact with each other, which causes them a great deal of distress.

██████████ is now 14 years old. Given the *de facto* authorities policy of removing boys reaching early adolescence from the camps and transferring them to other facilities, he is at acute risk of being forcibly separated from his family and detained elsewhere. If that occurs, it is likely that he will have little to no contact with his family, thereafter, will face extreme conditions of detention and possible enforced disappearance or acts tantamount to enforced disappearance. With each passing day as he is seen as an adolescent and not a child by the camp authorities, his risk of being moved to life-threatening conditions that meet the threshold for torture, inhuman and degrading treatment under international law is acute.

██████████ has Graves' disease, an autoimmune condition of the thyroid, which was diagnosed in 2006, and multiple sclerosis (MS), a chronic disease impacting the brain, spinal cord, and optic nerves, diagnosed in 2009. Her health has seriously declined since her detention in the camps. As a result of her illnesses, she has partial blindness, speech impediments and mobility difficulties since 2018. She now relies on a crutch to walk and there are days when she cannot do anything. In 2019, she suffered an MS attack for several minutes, in which she could not move, leaving her even weaker than before. Between 2018 and 2019, the right side of her face started to "sag" and "shut down", and doctors with whom she was able to consult in Al-Hol, including from Médecins Sans Frontières, suggested the cause might be a tumour behind her eye or in her head. In May 2021, the right side of her forehead started swelling and her right eye started to protrude, causing "excruciating" pain, and leading to complete blindness in her right eye. A doctor confirmed she had hypertension. She has also developed ulcers, high blood pressure, kidney problems urinary tract infections, and asthma. The detaining authorities notified the South African Government of the urgency of her medical condition in 2019 and 2020

While we do not wish to prejudge the accuracy of these allegations, we wish to express our utmost concern at the situation of ██████████ ██████████ and her three children ██████████ ██████████ in these complex, volatile and unsafe environments in North-East Syria. We are extremely concerned about ██████████ deteriorating health situation, which may put her life in danger in the absence of immediate and appropriate medical assistance, and that ██████████ son, ██████████ may be transferred out of the camp and separated from his family, and that the three surviving children have been detained for four years as minors.

#### *Prolonged Arbitrary Detention*

We are extremely concerned at the continued arbitrary detention in inhumane conditions of ██████████, ██████████ and her three children in Al-Roj camp. The profound concerns for the extremity and uniqueness of the material situation in the

camps have been recently addressed by the European Court of Human Rights in the case of *H.F. and Others v France* as constituting “a real and immediate threat to [women and children’s] lives and physical well-being, on account both of the living conditions and safety concerns in the camps, which were regarded as incompatible with respect for human dignity, and of the health of those family members and the extreme vulnerability of the children, in particular, in view of their age.”

We are concerned at the possible arbitrary nature of the detentions, which lack legal basis, judicial authorisation, review, control, or oversight. In this respect, we wish to recall that “the prohibition of “arbitrary” arrest and detention has been recognized both in times of peace and armed conflict” and that “the prohibition of arbitrary deprivation of liberty is part of treaty law, customary international law and constitutes a jus cogens norm. Its specific content, [...] remains fully applicable in all situations” (Deliberation No. 9 in A/HRC/22/44, paras. 45 and 51).

The UN Independent International Commission of Inquiry on the Syrian Arab Republic has found that “[d]epriving individuals, including children, with alleged links to Da’esh ... of liberty without criminal charge or any individual assessment by an impartial and independent body as to whether their internment is justified on grounds of imperative reasons of security is unlawful” and concluded that their “blanket internment” amounts to an “unlawful deprivation of liberty” (A/HRC/49/77, paras 112 and 113). We recall that the UN Human Rights Committee has emphasised that detention based on alleged criminality of family members is an “egregious” example of arbitrary detention.<sup>1</sup> We also note that there is no permissible human rights basis for States to sub-contract directly or indirectly administrative or security detention to non-State actors on the territory of third States. There is deep concern at the facilitation of mass arbitrary detention by States both directly and indirectly in these detention facilities in North-East Syria.

The Working Group on Discrimination against Women and Girls emphasizes in its report on Women Deprived of Liberty (A/HRC/41/33) that women’s deprivation of liberty is a significant concern around the world and severely infringes on their human rights. In the context of addressing conflict, crisis, terrorism, and national security, the Working Group recommended States include women’s rights focus and not instrumentalise women’s deprivation of liberty for the purposes of pursuing government aims.

### *Detention of children*

Under international law, the detention of children must always be used as a last resort and for the shortest duration possible as required by article 37 (b) of the Convention on the Rights of the Child (CRC) and article 9 of the International Covenant on Civil and Political Rights. Article 3(1) of the CRC provides the child’s right to have his or her best interests assessed and taken into account as a primary

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<sup>1</sup> Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person), 16 December 2014, CCRP/C/GC/35, para. 16

consideration in all actions or decisions that concern her, including by administrative authorities.

We also wish to emphasize that States must ensure that “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time” (article 37 (b) of the CRC).

Children detained for their association with individuals themselves presumably detained for association with armed groups also designated as terrorists are first and foremost victims of grave abuses of human rights and humanitarian law.<sup>2</sup> Under international law, any child association with a non-State armed group, even those designated as ‘terrorists’, is always considered as engaging in some form of coercion or constraint. Children do not enjoy the independence, agency, and range of choices open to adults. ██████████ were brought to Syria by their parents as eight- and seven-year-old girls and a five-year-old boy and have never been engaged in the activities of a designated armed or terrorist group. In these circumstances, the children cannot be considered to have enjoyed the possibility to exercise meaningful consent”.<sup>3</sup> We recall that, according to article 2(2) of the CRC, it is a violation of the principle of non-discrimination to punish a child based on the “status, activities, expressed opinions, or beliefs” of his parents. Detention on such discriminatory grounds constitutes collective punishment,<sup>4</sup> which the Special Rapporteur on the promotion and protection of human rights while countering terrorism has qualified a clear breach of international law.<sup>5</sup>

### *Transfer of boys*

This present communication raises further extremely serious concerns about the possibility of the transfer of ██████████ currently 14 years old, to one of the detention centres in North-East Syria. We have been made aware that most third country male children around the age of 12 are violently taken away from their mothers and siblings, often in traumatic circumstances, from the camps in North-East Syria and transferred to other detention centres, either ‘rehabilitation’ centres or adult detention centres. The spectre of a ‘cradle to grave’ detention cycle for young male children in North-East Syria is of extremely profound concern to the Experts. The de facto culling, separation, and warehousing of adolescent boys from their mothers is an abhorrent practice

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<sup>2</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 and Global Study on Children deprived of their Liberty, p 615.

<sup>3</sup> See Position of the Special Rapporteur on the promotion and protection of human rights while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria, May 2021.

<sup>4</sup> UN Office of Counter-Terrorism, “Children Affected by the Foreign-Fighter Phenomenon: Ensuring A Child Rights Based Approach”, para. 52.

<sup>5</sup> See Position of the Special Rapporteur on the promotion and protection of human rights while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria, May 2021.

inconsistent with the dignity and best interest of the child and inconsistent with the most essential of rights any child is entitled to in any circumstances.

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. The report of the Special Rapporteur on the sale and sexual exploitation of children (A/77/140) highlights children on the move and those affected by conflict are at high risk of sale and sexual exploitation. Unaccompanied minors are additionally rendered vulnerable owing to the risks being exacerbated by limited access to safe migration pathways, services, and justice.

Even if purportedly carried out in the best interest of the child, any transfer from one place of detention to another, and any removal from the care of their mother, must be subjected to judicial scrutiny, and transparent processes in which the best interest of the child can be transparently, impartially and independently assessed. Instead, these are allegedly carried out absent any human rights and rule of law compatible process to justify their indefinite detention and may constitute a complete abrogation of their best interest and a serious violation of numerous fundamental human rights. We are concerned that the transfer of boys from one place of detention to another lacks legal basis; that no 'best interest' test was adequately applied to decide on their detention; no legal process was undertaken to determine the appropriate care, responsibility rights or needs of these children traumatic separation from mothers has been conducted without any legal regulation or recourse; physical and psychological violence to young boys has no remedy; and health is profoundly compromised by sub-human standards of indefinite detention, in violation of articles 3, 9, 16, 19, 20, 24, 34, 37 and 40 of the CRC. We recall that it is the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism clear position that boys' detention in various centres and prisons is solely based on ill-grounded presumptions that all male children over the age of 10 in the Syrian conflict zone are to be presumed violent extremists or terrorists, shifting the discourse in relation to children from protection to punishment, from victim to threat. The former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health highlighted that "all forms of detention severely compromise children's enjoyment of the rights to health, to healthy development and to maximum survival and development, in contravention of the International Covenant on Economic, Social and Cultural Rights (art. 12) and the CRC (arts. 6 and 24)".<sup>6</sup>

We would like to bring to the attention of your Excellency's Government articles 3, 7 and 20 of the UN Declaration on the Protection of All Persons from Enforced Disappearances, which establishes, the States obligation to prevent and

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<sup>6</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, para. 55.

terminate acts of enforced disappearance; that no circumstances, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances, and the need to protect the best interests of children and the specific obligations when enforced disappearance of children is at stake. In this regard, the general comment of the Working Group on Enforced or Involuntary Disappearances on children and enforced disappearances (A/HRC/WGEID/98/1) 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).

*Health concerns – [REDACTED]*

We are deeply concerned that her cumulative health conditions are life-threatening. We note that your Excellency’s Government has already been informed by the camp authorities of the urgency of the health condition of [REDACTED]. We are deeply concerned that a disabled and highly vulnerable woman, whose situation is clearly deteriorating, does not have adequate access to necessary and specialized medical care, and is at risk of serious medical consequences should her conditions remain untreated.

We stress that should the allegations prove to be accurate, the failure to provide adequate and prompt medical care may place [REDACTED] life in danger, potentially in violation of article 3 of the Universal Declaration of Human Rights and article 6 (1) of the International Covenant on Civil and Political Rights ratified by South Africa on 10 December 1998, each of which guarantees the right of everyone to life and security and provides that these rights shall be protected by law and that no person shall be arbitrarily deprived of life. We further note that when the State detains an individual, it has a heightened duty of care to protect that individual’s rights. This duty includes providing all detained persons with necessary medical care and adequate periodic monitoring of their state of health (CCPR/C/GC/36 para. 25). If a person dies as a result of injuries sustained in state custody, the state is presumed to be responsible (CCPR/C/GC/36, para. 29).

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), which enshrines the right of everyone, including people prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights reiterates that “States are obliged to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services.”

The former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health makes reference to the fact

that “[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that [v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”.<sup>7</sup> He also stressed that “[t]he suffering experienced by women who are imprisoned or involuntarily confined and the related negative impact on the enjoyment of their right to health is understood to be significantly greater than that experienced by men.”<sup>8</sup>

As highlighted in its thematic report on Health and Safety (A/HRC/32/44), the Working Group stresses that women’s safety should be addressed as an integral aspect of women’s health. Women’s exposure to gender-based violence in both the public and private spheres, including conflict situations, is a major component of women’s physical and mental ill health and the destruction of their well-being and constitutes a violation of their human rights.

In addition, we would like to underline the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, according to which prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9).

Additionally, we would like to refer to the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175), which recognize the responsibility of States to provide health care for prisoners, free of charge without discrimination (rule 24), paying special attention to those with special healthcare needs or with health issues that hamper their rehabilitation (rule 25) and indicate that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals (rule 27). In prison, women face significant challenges in accessing health care and are extremely vulnerable to different forms of violence in these institutions. Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse, and sexual harassment shall be developed and implemented. We wish to also recall rule 46 which stresses that healthcare personnel shall “pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff” and that “[h]ealth-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.” The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (‘the Bangkok Rules’) provide providing for the specific characteristics and needs of women deprived of liberty.

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<sup>7</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, para. 18.

<sup>8</sup> Ibid., para. 71.

Pursuant to the Convention on the Rights of Persons with Disabilities, article 17, persons with disabilities have the right to respect for their physical and mental integrity “on an equal basis with others”. As per the provisions of article 14 and article 5, States must ensure that persons with disabilities who are deprived of their liberty are entitled, on an equal basis with others, to the guarantees established by international human rights law, including by providing reasonable accommodation and ensuring conditions of accessibility. Thus, the denial of reasonable accommodation in detention can be considered a form of discrimination and, in some instances, a form of torture or ill-treatment. Lastly, according to article 25 of the Convention, States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive.

#### *Duty to repatriate*

It is our view that States, including your Excellency’s Government, have positive obligations to take necessary and reasonable steps to intervene in favour of their nationals abroad, in particular where there are reasonable grounds to believe that they face treatment in serious violation of fundamental international human rights law and amounting to jus cogens or non-derogable customary law norms. This duty to act with due diligence to ensure that the lives of your nationals are protected from irreparable harm to their life or to their physical integrity also applies where acts of violence and ill-treatment are committed by non-State actors or armed groups, and in our view apply in this extreme context.

It is our understanding that, in late 2021, your Excellency’s Government engaged in commencing a repatriation process for the approximately 16 South African women and children in the camps. We urge your Excellency’s Government to resume this process and to urgently repatriate these five individuals, particularly in view of the age of the children, the risks of transfer out of the camp, the health of these individuals, and their specific vulnerabilities. We urge your Excellency’s Government to actively cooperate with other States willing to support the repatriation of your nationals at this time. We also take this opportunity to encourage you to repatriate all men, women, and children from the camps and other detention centres in North-East Syria.

We stress that preventing family separation and preserving family unity are key components of the child protection system. Separation from parents should not happen unless such separation is in the best interest of the child, subject to judicial review and in accordance with applicable law and procedures (CRC, article 9(1)). Given the gravity of the impact on the child of separation from their parents, such separation should only occur as a last resort, when there are no less intrusive measures to protect the child (General Comments No. 7 (2005) para. 36 and No. 14 (2013), paras 60 and 61).

#### *Trafficking in persons*

Given the specific facts of the case, the young age (a minor) when [REDACTED] married and allegations of forced marriage of [REDACTED] in Syria and difficulties in escaping the region, we are particularly concerned that indicators of trafficking are not

being considered, neither the risk to trafficking of children currently in the camps. Your Excellency's Government must be mindful that women's and children's association with terrorist groups is highly complex, and that there is great potential for coercion, co-optation, trafficking, enslavement, sexual exploitation, threat and harm on joining or being associated with non-state armed groups, sexual or household services or labour for the organization. The links between trafficking and sexual violence in armed conflict with terrorism and other transnational criminal activities have on several occasions been highlighted by the UN Security Council (S/PRST/2015/25, resolutions 2331 (2016) and 2388 (2017)), while Security Council resolution 2242 (2015) highlights that acts of sexual and gender-based violence can be part of the strategic objectives and ideology of certain terrorist groups. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency's Government on 20 February 2004, highlights that trafficking can occur through an exploitative process or when an exploitative situation results or is maintained without a preceding exploitative process.

Regarding the situation of the women, the Special Rapporteur on trafficking in persons in her intervention to the European Court of Human Rights on *H.F. and M.F. v. France and J.D. and A.D. v. France* highlighted that “the experiences of women and girls associated with terrorist groups are highly complex, and involve a wide range of factors, including age and backgrounds. In the context of marriages – both with respect to trafficking for the purpose of forced marriage, but also with respect to the role of marriage in trafficking experiences – the UNODC has highlighted that, in certain circumstances, “husbands employ various methods of control to limit the freedom of movement and choice of their spouses, using violence, threats and psychological pressure. Women and girls are abused and exploited ... and they are extremely dependent on their husbands in multiple ways.” (UNODC, *Interlinkages between Trafficking in Persons and Marriage* (2020) p. 56). States must be mindful of the potential for coercion, coercive control, position of vulnerability, deception and trafficking when examining these cases. Indeed, “while some women in the camps may bear various degrees of responsibility for crimes based on their roles in ISIL, some were also victims of abuse, trafficking or sexual exploitation after having been coerced or groomed into joining the group.” (23<sup>rd</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (2021) A/HRC/46/55, para. 55”).

For children, defined under international law as individuals below the age of 18, trafficking does not require that any “means” exist, as per the definition in the Palermo Protocol, article 3. In this context, the Special Rapporteur on trafficking in persons, especially women, and children reminded in her report to the General Assembly in 2021, A/76/263, “multiple and intersecting forms of exploitation are common. While some children are recruited for more “traditional” forms of exploitation, like sexual exploitation and forced labour, terrorist groups also force children to be involved in criminal activities as perpetrators or accomplices in support roles” (para. 29).

Concerning the positive obligations of States as recognized under international human rights law to identify and ensure the protection of victims of trafficking, the Special Rapporteur recommended that States should take immediate action to (a) Repatriate victims of trafficking and children of victims, ensure the best interests of the child as a priority and a protective environment for children (A/76/263, para. 68). It is imperative that State responses do not perpetuate or contribute further harm to those who have already experienced profound violence and trauma.

States have also an obligation to ensure a protective environment for children. The particular rights applicable to children, protected under, *inter alia*, the CRC and its Optional Protocols (in particular, art. 6, 7, 24(2) and 27) state that children must always be treated primarily as victims and the best interest of the child must always be a primary consideration. Similarly, it is important to recall obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in particular its article 6 on the prohibition of trafficking in persons, and CEDAW General Recommendation No. 38 on trafficking in women and girls in the context of global migration, specifically, paragraphs 31, 38-42, 85, 89, 94, 98 and 100-101, as well as article 8 of International Covenant on Civil and Political Rights and articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking reminds States, including your Excellency's Government, that they have an international obligation not only to identify traffickers but also to identify and take positive action to protect victims of trafficking. This includes the obligation to conduct individual, case-by-case assessments of every suspected victim of trafficking to promptly identify them and take meaningful steps to offer any assistance or protection to their nationals who have been trafficked into North-east Syria, including by referring them to the appropriate services for early support and long-term assistance. Failure to protect a trafficked person correctly is likely to result in further abuse of that person's rights. We further note that recommended principle 7, concerning protection and assistance to victims of trafficking, provides that "trafficked persons shall not be detained, charged or prosecuted." The reports of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/47/34) highlight the principle of non-punishment, which must be applied without discrimination to all trafficked persons. We also note, in this regard, the well-documented difficulties in leaving the conflict zone controlled by a designated terrorist group, clearly enhanced for very young women, in extremely vulnerable situations, married several times in quick succession and with young children.

Finally, we would like to remind your Excellency's Government of the obligation to repatriate victims of trafficking in persons as enshrined in the Palermo Protocol article 8, "The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay."

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 your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details on the domestic mechanism(s) in place in South Africa to review requests for repatriation and steps that may have been taken to repatriate victims and survivors, including children, as well as secure their most fundamental rights while in the camps in Syria.
3. Please provide information on the actions taken by your Excellency's Government to address the risk and prevent the transfer of ██████████ ██████████ out of the camp and protect his fundamental rights.
4. Please provide information on what steps have been taken to address ██████████ deteriorating medical situation including securing urgent interim medical assistance in Al-Roj camp.
5. Please provide information on the measures taken to ensure that preventive and protective measures are undertaken for children in view of combating the risks of sale, abuse, exploitation, illegal adoption, and enforced disappearance. Please also outline the steps envisaged for their access to support services, including adequate and effective rehabilitation.
6. Please outline the measures on family reunification procedures, the extent of reasonable time for the completion of length in reunification and the points of consideration to take account of the best interests of the child during the entire process.
7. Please provide any information on the measures that your Excellency's Government is taking to determine the best interest of children while in North-East Syria.

We would also like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its

regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the communication and the regular procedure.

We may publicly express our concerns in a near future to draw public attention to the dire situation of these persons, which in our view warrants prompt action. Should we do so, any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government to clarify the issue in question.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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

Matthew Gillett  
Vice-Chair of the Working Group on Arbitrary Detention

Gerard Quinn  
Special Rapporteur on the rights of persons with disabilities

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, sexual exploitation and sexual abuse of children

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