

Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL SVK 1/2023

(Please use this reference in your reply)

25 January 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolution 49/10.

In this connection, I would like to bring to your Excellency's attention information I have received concerning the situation of Mr. **Hussein Salim Al-Marfadi Yafai** a Yemeni citizen currently a resident of Slovakia. Mr. Al-Marfadi Yafai was cleared for release and transferred from the detention facility at the U.S. Naval Station Guantánamo Bay to Slovakia on 20 November 2014, following over a decade of alleged arbitrary detention and torture, inhuman and degrading treatment sustained in U.S. custody. I am concerned that Mr. Al-Marfadi Yafai remains unable to fully exercise his human rights specifically in respect of a right to legal identity and freedom of movement.

A technical visit carried out by my mandate to the United States and the detention facility at Guantánamo Bay, Cuba was undertaken in early 2023¹ and included a visit to Slovakia. I take this opportunity to recognize the positive cooperation and constructive conversations with your Excellency's Government during my technical visit. In my technical visit statement, I generally acknowledged the significance and importance of third-country resettlement, in the context of the sustained human rights violations experienced by persons detained at the U.S. Naval Station at Guantánamo Bay. I reaffirm the findings and recommendations set out in my report and underscore the ongoing international law obligations of both the transferring and receiving States. I recognise that the decision by your Excellency's Government to resettle Mr. Al-Marfadi Yafai evidenced a positive and constructive role in addressing his then-indefinite and arbitrary detention.

In view of the above, I respectfully urge your Excellency's Government to safeguard the irreducible rights of Mr. Al-Marfadi Yafai in compliance with international human rights instruments and encourage the ongoing review and reconsideration of the laws and policies that affect the rights and freedoms of former Guantánamo detainees resettled in Slovakia and other countries, and encourage the ongoing review and reconsideration of the laws and policies that affect the rights and freedoms of former Guantánamo detainees resettled in Slovakia to date.

¹ See Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 14 June 2023. The full text of the statement is available at <https://www.ohchr.org/en/special-procedures/sr-terrorism/us-and-guantanamo-detention-facility>.

According to the information received:

Mr. Al-Marfadi Yafai is a 46-year-old who holds a Yemeni nationality, born in Aden (Yemen) on 19 June 1977. He was transferred from U.S. military custody to the custody of the Slovak authorities at a military airport some miles from Zvolen, Slovak Republic in November 2014. He now resides in Zvolen, Slovak Republic.

He was captured in Iran by non-uniformed Iranian police, jailed for two months and transferred to the authorities in Afghanistan, in April 2002. He was held in an Afghan prison in Kabul for approximately 2.5 months and was then transferred to U.S. custody in approximately July 2002. He was rendered to Guantánamo Bay in May 2003. His whereabouts and treatment between July 2002 and May 2003 while in the custody of the U.S. authorities are not confirmed. He was held at Guantánamo Bay for 11 years and never charged or tried for any crime. He was subject to torture, inhuman and degrading treatment and punishment while held at this facility. He was cleared for transfer by the Guantánamo Review Task Force (2009-2010).

As a result of a diplomatic agreement between the Government of the United States and the Slovak Republic, the latter agreed to resettle a number of detainees who had been held at the Guantánamo Bay detention facility. Information was provided which appears to confirm that diplomatic assurances were provided in respect of Mr Yafai's transfer. I understand that, *inter alia*, guarantees of "humane treatment" and certain security guarantees were given in respect of the transfer and that this agreement was subject to certain financial arrangements to facilitate Slovak's Government acceptance of and provision for former detainees. While the details of these financial arrangements are unknown, the information provided suggests that the financial arrangement included an assistance program for Mr. Al-Marfadi Yafai, and other former detainees resettled in Slovakia. It is understood that a lump-sum payment was made to Mr. Al-Marfadi Yafai and other former detainees when the regular assistance program was ended. The adequacy of the assistance program and payments for the needs of Mr. Al-Marfadi Yafai are disputed, particularly given the challenges faced in integration into Slovak society. These include both the physical and psychological capacity to engage in regular work, ongoing issues of stigma preventing access to work and public services, and the particular and long-term difficulties experienced by torture victim-survivors in resuming a normal life, particularly when comprehensive torture rehabilitation has not been provided. It is worth noting that the town of Zvolen is primarily a Christian-majority town, with few Muslims or other diverse religious or ethnic groups living there. Integration has been challenging given the alleged sensationalized media coverage of Mr. Al-Marfadi Yafai and other former Guantánamo detainees as well as the obvious religious and ethnic differences in a highly homogenous society.

Mr. Al-Marfadi Yafai did not have immediate access to medical care following his transfer by the Government of the United States. It allegedly took him three months to meet a civilian doctor. Moreover, his medical records from his time of detention at Guantánamo Bay, Cuba were not transferred with him and it is

alleged that no doctor in the Slovak Republic has been able to treat his serious psychological and physical symptoms adequately as they have had no access to his full health records, they do not understand what happened to him at the detention facility at Guantánamo Bay, Cuba, and they lack the requisite resourcing and technical expertise.

According to the information received, Mr. Al-Marfadi Yafai suffers from Post-Traumatic Stress Disorder (PTSD) and continues to experience headaches, somatic pain, body aches and rheumatism—ongoing consequences for the violence, both physical and psychological, he was subjected to at Guantanamo Bay, Cuba. In June 2023, Mr. Al-Marfadi Yafai was admitted to a hospital in Slovakia due to an accident that triggered intestinal bleeding leading to a surgical intervention. He underwent an abdominal laparotomy and was thereafter in the intensive care unit of the hospital for several days. He continues to recover from this surgery but suffers from anxiety, due to the uncertainty of his legal status and economic future have detrimental consequences for his health.

Following his transfer, Mr. Al-Marfadi Yafai was initially housed in an apartment with other former detainees in a building that was maintained and monitored by the Slovak Government. It is alleged that the conditions of the original transfer were exceedingly challenging including the isolation of the apartment to which they were sent, and for the first two weeks. They were not provided with clothing and other essential needs. After preliminary resettlement, Mr. Al-Marfadi Yafai and other detainees were moved to a migrants' centre which traumatized them further as the facility appeared to be a form of detention.

Although Mr. Al-Marfadi Yafai has currently the ability to live independently, most recently working at a factory, penury and economic challenges are ever-present including a lack of assurance for long-term housing provision and ongoing fear and anxiety of being unable to generate income and be able to pay for basic necessities for life. According to the information received, he has been paid less in his employment because he does not have a Slovak nationality.

Mr. Al-Marfadi Yafai alleges that surveillance of his activities and day-to-day life was a sustained feature of his initial resettlement period and remains present today. In recent years, he has allegedly been physically followed and surveilled by Slovak government officials when speaking with journalists and other external stakeholders, and individuals in contact with Mr. Al-Marfadi Yafai have allegedly been approached and questioned by intelligence agents and subject to reprisals. Such surveillance has a direct impact on his freedom of movement, his privacy and his family life. He experiences such surveillance to extend the experience of incarceration from Guantánamo Bay into the present and sets him apart from other members of the community he lives in, making him an object of suspicion. This has had significant consequences for his capacity to fully integrate and be fully accepted by the community as a whole, in Slovakia.

Mr. Al-Marfadi Yafai also highlighted that his name has been consistently misspelled on official documents related to him. The misspelling accords with the spelling of his name used by the U.S. authorities when he was detained at Guantánamo Bay and transferred to the Slovak Republic. It is alleged that the correct spelling of his name is not used on official documents by the Government of Slovakia as it would have a consequence for the security guarantees provided by the Government of the United States to enable the ongoing surveillance of Mr. Al-Marfadi Yafai in the country, as well as broader intergovernmental watchlisting measures, including by Interpol.

According to the information received, Mr. Al-Marfadi Yafai has a resident identification card and an idiosyncratic black passport that has caused confusion among government officials and cannot be used for international travel. Having been in Slovakia beyond the eight years of residency required to be eligible for citizenship, he applied for Slovak citizenship on 13 March 2023, having paid the application fee and taken the requisite Slovak language test. His application was rejected by the District Office Banská Bystrica, Department of General Internal Administration, as the competent national body to make a determination. This decision was allegedly made in consultation with the Ministry of Interior. In order to qualify for citizenship, Mr. Al-Marfadi Yafai was requested to make available certain documents to the relevant authorities. The required documents include “a birth certificate and proof of good reputation not older than 6 months, which is an extract from the criminal record of each State of which he is or has been a citizen in the past, and an extract from the criminal record of each State in which he has been allowed to reside in the last 15 years before submitting his application for citizenship of the Slovak Republic”. The decision of the competent authority notes that “the applicant is not an asylum seeker, nor has he been granted subsidiary protection”.

Mr. Al-Marfadi Yafai’s country of birth is currently in a state of extended civil war. Indeed, upon his initial clearance by the Government of the United States for transfer, Mr. Al-Marfadi Yafai was designated for “conditional” detention, i.e., his repatriation was barred due to the security environment in Yemen, though resettlement to third countries was permitted. Repatriation of Guantánamo detainees to Yemen remains barred by the U.S. Congress for security reasons. By the terms of his resettlement, he is unable to travel to his country of origin and concerns related to *non-refoulement* would arise if he were to travel. He is unable, due to administrative and security limitations in his country of nationality and his inability to access the territory, to provide a birth certificate. The current state of administrative affairs in Yemen may also mean that his country of origin cannot issue a statement of identity. It is further alleged that the Slovak Government cautioned Mr. Al-Marfadi-Yafai that it would not be safe to be in touch with Yemeni authorities to request the provision of documents.

Moreover, Mr. Al-Marfadi Yafai was held in a situation of extended arbitrary detention in a facility which legal status does not qualify as “residence on a territory” and notably in a detention facility in which his legal capacity to challenge his detention was largely extinguished. Thus, according to the information received, the Government of the United States is unwilling or

unable to provide a record of his time to satisfy this requirement of his citizenship application. Due to Mr. Al-Marfadi Yafai's alleged failure to supply these documents within the timeframe established by the Slovak citizenship, the review process of his application has been rejected.

Mr. Al-Marfadi Yafai is currently in a legal limbo, where the review process and the position of his transfer and basis of life in Slovakia, accepted and facilitated by both the Governments of Slovakia and the United States are not recognized by a separate legal process of citizenship which can give him security and stability. He does not have the permanence of residency and security and is thus unable to fully root his life in his new country as a citizen. He is unable to travel beyond the borders of Slovakia and thus also unable to have access to all the benefits of living in the European Union, despite the long-term and permanent nature of his life in Slovakia. He also does not have access to another legal status, such as refugee or asylum status, and cannot gain benefits including supplementary social benefits from other legal categories of entitlement on the territory of Slovakia. He has been *de facto* denied the right to enter and leave his own country (Yemen) by virtue of his detention by the U.S. authorities, the inability or unwillingness of his country of nationality to provide documentation allied with the unwillingness of the Government of the United States to provide documentation which would make him eligible for Slovak citizenship.

According to the information received, the Government of Slovakia has been unwilling to provide a human rights-compliant means for Mr. Al-Marfadi Yafai to adjust his specific legal status. Having positively accepted his transfer, it is alleged that the Government of Slovakia would have not fully respected the due process rights of this former detainee, now residing on the territory of Slovakia.

While I do not wish to prejudge the veracity of these allegations, I express my concern at the unwillingness and apparent refusal of the government authorities to grant Mr. Al-Marfadi Jaafai Yafai Slovak citizenship, even though he appears to have met the criteria for eligibility for citizenship. I regret that the unwillingness and apparent refusal to give him Slovak citizenship or any other permanent immigration status has significantly affected Mr. Al-Marfadi Yafai's enjoyment of other civil, political, economic and social rights, in particular, his right to legal personality and freedom of movement, which is particularly concerning given his position as a victim/survivor of torture and rendition.

I am further concerned about Mr. Al-Marfadi Yafai's lack of access to meaningful and adequate medical care and torture rehabilitation to treat his severe psychological and physical symptoms related to his stay in Guantanamo Bay, Cuba.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 above-mentioned allegations.
2. Please provide information on what steps have been taken to safeguard the right to legal identity and legal status for Mr. Al-Marfadi Yafai since his transfer to Slovakia.
3. Please provide detailed information on what diplomatic assurances and human rights safeguards were included in the transfer agreement between your Excellency's Government and the Government of the United States in respect of Mr. Al-Marfadi Yafai.
4. Please provide information on measures taken or foreseen by your Excellency's Government to provide for long-term security including comprehensive medical care which supports torture rehabilitation for Mr. Al-Marfadi Yafai.
5. Please provide information on the criteria for alleged continued security surveillance of Mr. Al-Marfadi Yafai and what legal avenues exist for him to challenge or provide exculpatory evidence to any such claims, particularly if that request was made and remains in place by a third State, specifically the United States Government.
6. Please provide detailed information on the human rights protections built into the process of citizenship determination and application in Slovakia, in particular to guard against arbitrariness and discrimination.

I 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.

While awaiting a reply, I 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(s) responsible for the alleged violations.

A similar communication has also been sent to the Government of the United States of America.

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

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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, I recall your Excellency's Government that the international human rights law provides for the right to acquire, change, and retain nationality. Article 15 of the Universal Declaration of Human Rights (UDHR) stipulates that "[e]veryone has the right to a nationality" and "[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." The right to nationality has been recognised as a "fundamental principle of international law."² International law has a well-established role in limiting States' regulation of nationality. International courts and tribunals have long recognised that international law imposes express limits on States' powers in nationality matters, both through customary international law and treaty obligations.³

The prohibition of the arbitrary deprivation of nationality is enshrined in article 15(2) UDHR, and implicitly recognised by all the principal international⁴ and regional⁵ human rights treaties through the proscription of discrimination on various grounds in respect of the right to nationality. The issue is regularly revisited given the United Nations' deep concern that the arbitrary deprivation of nationality may impede an individual's full enjoyment of all their associated human rights.⁶ Arbitrary deprivation of citizenship has been consistently recognized as a violation of international law. In light of the substantial body of treaty law, pronouncements by international organizations, and judicial consensus⁷ on the prohibition against the arbitrary

² UN General Assembly, Resolution 50/152: Office of the United Nations High Commissioner for Refugees (9 February 1996), para. 16.

³ *Nationality Decrees Issued in Tunis and Morocco* (Permanent Court of International Justice), Ser. B, No. 4, Advisory Opinion, 7 February 1923, pp. 23-24; *Georges Pinson v United Mexican States* (1928) 5 UNRIAA 327, p. 364 (France- Mexico Claims Commission). See also Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) 179 LNTS 89, Article 1. ILC, 'Draft Articles on Nationality of Natural Persons in relation to the Succession of States (with commentaries)' (1999) II (2) YBILC, p. 24, para. 3. See also 'Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General', UN Doc. A/HRC/13/34, 14 December 2009, para. 19.

⁴ Convention on the Nationality of Married Women (1957) 309 UNTS 65, Articles 1-2; International Convention on the Elimination of All Forms of Racial Discrimination (1965) 660 UNTS 195, Article 5(d)(iii); Convention on the Elimination of All Forms of Discrimination Against Women (1979) 1249 UNTS 13, Article 9(1); Convention on the Rights of the Child (1989) 1577 UNTS 3, Article 8(1). See also International Covenant on Civil and Political Rights (1966) 999 UNTS 171, Article 24(3), Convention on the Rights of Persons with Disabilities (2006) 2515 UNTS 3, Article 18(1).

⁵ American Convention on Human Rights (1969), Article 20(3) ("*No one shall be arbitrarily deprived of his nationality or of the right to change it*"); Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995), Article 24(2) ("*No one shall be arbitrarily deprived of his citizenship or of the right to change it*"); European Convention on Nationality (1997), Article 4(c) ("*No one should be arbitrarily deprived of his or her nationality*"); Revised Arab Charter on Human Rights (2004), Article 29(1) ("*Every person has the right to a nationality, and no citizen shall be deprived of his nationality without a legally valid reason*"); ASEAN Human Rights Declaration (2012), Article 18 ("*No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality*"). See also African Commission on Human and Peoples' Rights, 234: Resolution on the Right to Nationality, 23 April 2013.

⁶ See, e.g., UN HRC, 'Human rights and arbitrary deprivation of nationality', UN Doc. A/HRC/RES/20/5, 16 July 2012, para. 6.

⁷ See, e.g., Eritrea-Ethiopia Claims Commission, Partial Award (Civilian Claims – Eritrea's Claims 15, 16, 23 and 27-32) (2004) 26 UNRIAA 195, para. 57 (the Commission accepted that the rules cited, including Article 15.2 of the UDHR, were customary); *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Inter-American Court of Human Rights, Advisory Opinion OC-4/84, 19 January 1984, Ser. A, No. 4, paras 33-34 (the Court referred to Article 15 of the UDHR in its recitation of "international law" on the right to nationality); *Case of Expelled Dominicans and Haitians v Dominican Republic*, Inter-American Court of Human Rights,

deprivation of nationality, the Special Rapporteur on the promotion and protection of human rights while countering terrorism considers that the prohibition has risen to the status of customary international law.⁸

Arbitrariness, under international human rights law is “not so much something opposed to a rule of law, as something opposed to the rule of law ... it is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of judicial propriety”.⁹ In the human rights context, this standard aims to ensure that even ‘lawful’ interference with rights is consistent with the provisions, aims and objectives of the relevant law, and above all, is reasonable.¹⁰ Arbitrariness thus contains both substantive and procedural aspects. To avoid arbitrariness, nationality adjudication must: 1) conform to domestic and international law; 2) serve a legitimate purpose consistent with international law; 3) be proportionate to the interest the State seeks to protect; and 4) occur with sufficient procedural guarantees and safeguards.¹¹

Nationality adjudication must conform with both international law and the State’s own domestic law. Through national proceedings, the domestic legal basis for deprivation of nationality does not meet the principle of legality. Any deprivation of nationality must conform both to the letter of the law and to its object to avoid an outcome that is unjust, illegitimate or unpredictable.¹²

Due process must also be respected as a matter of international law.¹³ The minimum content of the requirement of due process in a procedure of citizenship determination is that an individual can reasonably and fairly engage in the process of determination, have access to legal and/or administrative avenues including the right to appeal and not be unfairly burdened by administrative rules with de facto discriminatory effect. These are the essence of the protections contained in article 14 ICCPR, and article 6 ECHR. The fairness of proceedings can only be ensured if the individual has access to all relevant information and documents relating to the decisions affecting nationality.¹⁴ The United Nations has frequently stressed States’ obligation to observe

Judgment, 28 August 2014, Ser. C, No. 282, para. 253 (referencing the “fundamental right of the human person” established by instruments including the UDHR); *see also Anudo Ochieng Naudo v United Republic of Tanzania*, African Court on Human and Peoples’ Rights, Judgment, 22 March 2018, para. 76 (regarding the status of the UDHR as customary generally, in the context of considering Article 15(2)).

⁸ Several leading academics agree. *See e.g.*, T. Molnár, ‘The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives’ (2015) *Hungarian Yearbook of International Law and European Law* 67, p. 74; M. Manly and L. van Waas, ‘The Value of the Human Security Framework in Addressing Statelessness’, in *Human Security and Non-Citizens* (A. Edwards & C. Ferstman, eds., 2010), p. 63.

⁹ *Elettronica Sicula S.p.A. (ELSI) (United States of America v Italy)* [1989] ICJ Rep. 15, para. 128 (emphasis added).

¹⁰ UN Human Rights Committee, ‘CCPR General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17)’ (1988), para. 4.

¹¹ Report of the Secretary-General, Human Rights and Arbitrary Deprivation of Nationality, A/HRC/25/28 (2013), para. 4. *See also* Council of Europe, Explanatory Report to the European Convention on Nationality (Nov. 6, 1997), para. 36.

¹² *Ibid.*; ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, paras 24-25. *See, e.g., Ivcher Bronstein v Peru*, Inter-American Court of Human Rights, Judgment, 6 February 2001, Ser. C, No. 74, para. 95.

¹³ Article 14 ICCPR, UNHCR, Guidelines on Statelessness No. 5’, para. 98.

¹⁴ European Court of Human Rights, *McGinley and Egan v. The United Kingdom*, 21825/93 and 23414/94, 9 June 1998.

what it terms “minimum procedural standards”.¹⁵ Those standards are “essential to preventing abuse of the law”.¹⁶

Citizenship is a gateway right enabling the ‘right to have rights’,¹⁷ to claim and secure a collection of other basic human rights, in national legal systems. Limitations on access to nationality and procedurally deficient or discriminatory practices of deprivation of citizenship which are not the least intrusive means proportionate to achieve a legitimate purpose and do not comply with due process, undermine the holistic and equal access to human rights for citizens and non-citizens alike. It is recognized that States have a legitimate right to regulate and define the terms upon which citizenship is given, States remain bound by international law and, in particular, by the absolute prohibition of arbitrary or discriminatory access to nationality.

When an individual is unable to access citizenship there are monumental consequences for their human rights. Even where individuals are not left stateless, limited or procedurally deficient access to citizenship has economic, social, cultural, and familial after-effects with particularly deleterious effects on children whose parents are unable to access nationality. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms has expressed her particular concerns that discriminatory or procedurally deficient practices related to citizenship in national security contexts in effect create second-class citizenship for minority groups whose lived experience of citizenship functions as less stable than it does for majority or dominant populations in society.¹⁸ Moreover, without citizenship given the lack of meaningful capacity to leave Slovakia and travel to Yemen for Mr. Al-Marfadi Yafai, his lack of access to citizenship also means that he cannot exercise the right contained in Article 13(2) of the UDHR namely, to return to their country of nationality.¹⁹

The Committee on the Elimination of Racial Discrimination has emphasized that the enjoyment (or deprivation) of citizenship on the basis of race, colour, descent, or national or ethnic origin violates States’ Parties obligation to ensure the non-discriminatory enjoyment of the right to nationality.²⁰ The Committee has expressed concerns specifically about distinctions on the basis of dual nationality or citizenship status because of their tendency to result in impermissible discriminatory practices.²¹

¹⁵ ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, paras 43 and 63; UN HRC, ‘Human Rights and Arbitrary Deprivation of Nationality’, UN Doc. A/HRC/RES/13/2, 24 March 2010, para. 10; UN HRC, ‘Human rights and arbitrary deprivation of nationality’, UN Doc. A/HRC/RES/20/5, 16 July 2012, para. 10.

¹⁶ ‘Human Rights and arbitrary deprivation of nationality: Report of the Secretary-General’, UN Doc. A/HRC/13/34, 14 December 2009, para. 43.

¹⁷ *Pham v Secretary of State for the Home Department* [2018] EWCA Civ 2064, [2019] 1 WLR 2070, paras 30 and 49; see also *Trop v Dulles* 356 US 86 (1958), pp. 101-102.

¹⁸ Position Paper of the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism on the human rights consequences of citizenship stripping in the context of counter-terrorism with a specific focus on Northeast Syria <https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families>

¹⁹ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.2.1.2; and UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Intervention in the case of Shamima vs. Secretary of State for the Home Department, UK Court of Appeal (2020), para. 19

²⁰ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, para. 14 (2004); Committee on the Elimination of Racial Discrimination, General Recommendation No. 34, CERD/C/GC/34, para. 48 (Oct. 3, 2011). See also UN Human Rights Council, Resolution 20/4, A/HRC/RES/20/4 (2012); UN Human Rights Council, A/HRC/RES/32/5 (2016), paras. 2 and 4.

²¹ See, e.g., Committee on the Elimination of Racial Discrimination, Communication No. 42/2008, CERD/C/75/D/42/2008 (Sept. 15, 2009).

I further recall that freedom of movement is protected by international law (Article 12, ICCPR), including the right to have liberty of movement in a territory and the right to leave any country. Any restrictions on freedom of movement should be strictly necessary and proportionate, factually motivated, and subject to stringent and ongoing review.²² The Human Rights Committee has found that “liberty of movement is an indispensable condition for the free development of a person”. The Committee has confirmed that when the right to freedom of movement is restricted remedies must be meaningful.²³ When a person is lawfully in a State, any restrictions on his/her movement as well as any treatment that is different from that accorded to nationals have to be justified by the rules provided for in article 12(3). Any restriction on the right to free movement including on the ground of national security or public order, must be consistent with all other rights in the Covenant. The Human Rights Committee has also signaled the human rights concerns that follow from the ‘manifold legal and bureaucratic barriers unnecessarily affecting the full enjoyment of the rights of individuals to move freely, to leave a country ... and to take up residence’.²⁴ The Experts highlight the human rights concerns that follow from the application of bureaucratic barriers to securing nationality. I concur with the Human Rights Committee and highlight their deep concern about the application of restrictions under article 12, paragraph 3 which are in breach of the fundamental principles of equality and non-discrimination.²⁵ In parallel, I highlight the protections due to aliens under international law, recalling General Comment 15 of the United Nations Human Rights Committee,²⁶ affirming the obligation of State Parties to ensure the rights of the Covenant to “all individuals within its state territory and subject to its jurisdiction (art 2, para 1)”.²⁷

I respectfully emphasize your Excellency’s Government obligations to respect, promote, and fulfill the well-settled right to health under international law— without discrimination due to legal status or any other ground. I underscore the protections provided under international law for the right to health and the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. These rights are established by multiple treaties including by your Excellency’s Government’s obligations as a State party to the ICCPR, Convention against Torture (21 October 1994), and Geneva Conventions, namely the Third Convention relative to the Treatment of Prisoners of War (2 August 1955), and as a signatory¹⁶ to the International Covenant on Economic, Social and Cultural Rights (5 October 1977) and Convention on the Rights of Persons with Disabilities (30 July 2009). I underscore the central importance of the right to health in international law (Article 12, ICESCE). The Experts emphasize the interdependence between the right to health and other fundamental rights.

The right to health dates back at least to the provision of conditions “adequate for the health and well-being of himself and his family, including medical care” in the

²² Human Rights Committee, General Comment 27 (Freedom of Movement) U.N. Doc CCPR/C/21/Rev.1/Add. 9 (1999).

²³ *Id.*, para 3.

²⁴ *Id.*, para 17 (the Committee has provided a non-exhaustive list of such rules and practices).

²⁵ *Id.*, para 18.

²⁶ CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986.

²⁷ *Id.* Para 1 (highlighting that “there shall be no discrimination between aliens and citizens in the application of enumerated rights *id* para. 7).

Universal Declaration of Human Rights (art. 25). As set out in the preambular text of the Constitution of the World Health Organization, which the United States accepted on 4 February 1992, “[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.” The WHO Constitution defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. Article 12 of the International Covenant on Economic, Social and Cultural Rights affirms “the right of everyone, including people prisoners and detainees to the enjoyment of the highest attainable standard of physical and mental health.” The Human Rights Committee has also recognized that the right to health is an essential aspect of the “inherent right to life” stipulated by article 6 of the International Covenant on Civil and Political Rights (see CCPR General Comment No. 36).

I recall that timely access to complete medical records is a corollary of the right to health as protected by international law. These rights apply to persons in detention, but also persons who have ceased to be detained. I highlight the relevance of Rule 26 of the Mandela Rules on access to records both during and following detention.

Finally, I would like to draw the attention of your Excellency’s Government to the States’ obligations to provide victims of human rights violations with effective remedies. International standards recognize the right of victims—including families of disappeared persons—to adequate, effective and prompt reparation, which should be proportionate to the gravity of the violations and the harm suffered (*id.*, para. 292(H)). The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of a serious violation of international humanitarian law must be guaranteed equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. I also bring to the attention of your Excellency’s Government the right to a remedy for victims pursuant to article 13 of the Convention Against Torture, in particular to paragraph 7 (b) and (e) of Human Rights Council Resolution 16/23 adopted in April 2011, which urges States “(t)o take persistent, determined and effective measures to have all allegations of cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence...; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture,” and “(t)o ensure that victims of cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation.”