Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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(Please use this reference in your reply)

23 July 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 50/7 and 54/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged role of the national executive organization Child Care and Protection Board (Raad voor de Kinderbescherming; hereafter the "RvdK") currently under the Ministry of Justice and Security in the forced adoption of children of unmarried mothers during the period between 1956 and 1984**.

According to the information received:

Between 1956 and 1984, over ten thousand children are reported to have been forcibly adopted away from unmarried mothers, many of whom were minors at the time of giving birth. During this period, unwed pregnant women were socially stigmatized and seen as 'fallen women' for having sexual intercourse outside marriage. Many allegedly were put into institutions for unwed mothers and pressured into giving up their children against their will. After giving birth, mothers and children were oftentimes immediately separated and the details of their child's birth, such as whether the baby had survived or what sex the baby was, were withheld from the mothers. Sheets and blindfolds were frequently used to prevent them from seeing their children during childbirth. Children then often remained in an institution for a prolonged period before being placed with foster families, who later adopted them.

Mothers were structurally uninformed about their rights and potential Government support to which they were entitled to raise their children themselves, even though the law prescribed that mothers and children should, in principle, not be separated. The RvdK had a central role in the process of imposing child protection measures namely through conducting research on the family, determining and requesting the most appropriate measures from the judge, and advising the judge and private institutions. Specifically, the RvdK was trusted with preventing an intervention in the family-law bond between mother and child to the extent possible. However, by way of automatism, the RvdK directed and cooperated in practices that resulted in the separation of unmarried mothers from their child.

Case of Ms. Trudy Scheele-Gertsen

Ms. Trudy Scheele-Gertsen became pregnant in [redacted] whilst unmarried. Out of fear of social condemnation, her mother arranged for her to be admitted to a private Roman Catholic institution for unmarried pregnant women. Despite multiple appeals made to the institution to keep her child, Ms. Scheele-Gertsen was repeatedly told that relinquishing her child for adoption would be the only option. On [redacted], she gave birth to a [redacted], who was immediately taken away. The institution notified the RvdK of the [redacted] birth and the mother's intention to keep the child, then later, the institution submitted a request to the RvdK to intervene on behalf of the child under false pretenses that Ms. Scheele-Gertsen wanted to relinquish custody. The file contained numerous falsehoods and Ms. Scheele-Gertsen was neither informed of her rights nor of the possibility of keeping her child or receiving welfare benefits. Shortly after she was forced to leave the institution, the RvdK filed an application with the [redacted] District Court, aimed to relieve Ms. Scheele-Gertsen's role as a mother-guardian to [redacted], and to suspend her parental rights pending investigation. During this period, Ms. Scheele-Gertsen was denied access to [redacted], while being denied information about [redacted] and uninformed of the legal proceedings and her rights within these proceedings.

Following the legal proceedings, Ms. Scheele-Gertsen was suspended from exercising guardianship and [redacted] was entrusted to the RvdK. The report by the RvdK reportedly depicted her as a woman who had no interest in her child. After attempting to regain custody, the RvdK allegedly requested for the guardianship to be changed from suspension to a finite termination, and for [redacted] to be placed with an adoptive family, where it was believed that [redacted] would be better cared for than with her. However, [redacted] spent another [redacted] years in the institution, which negatively impacted [redacted] development. As such, Ms. Scheele-Gertsen chose to cooperate in the relinquishment for adoption, following which she experienced depression and severe anxiety with lasting psychological trauma, compelling her to resign from her job. The trauma caused by the renunciation of her child weighed heavily on her and causes her great grief up to this day.

Ms. Scheele-Gertsen's case and the testimonies of other mothers, demonstrate the involvement of the RvdK in the separation of children from their mothers causing profound suffering among the mothers, children, and other involved parties. It is only in recent years that Ms. Scheele-Gertsen and other mothers broke silence regarding the separation from their children. Official investigations into forced adoptions have been slow and insufficient in addressing the State's role in the system. It was only in 2015 that the Dutch Minister of Security and Justice initiated exploratory research on adoption practices from 1956 to 1984, which revealed that at least 13,000 women relinquished custody of their children during this period, without clarifying the State's involvement.

In response to these findings, the Ministry established a national contact point for adoption cases from 1956 to 1984 and commissioned an independent research institute to investigate domestic adoptions. Unfortunately, the institute's research was severely flawed and was halted. The shortcomings of

the investigation were later confirmed by the Commission of Independent Experts on the Investigation of Domestic Relinquishment and Adoption established under the Decree No. 3114150 of the Minister for Legal Protection of 30 November 2020, which concluded in the same year that the investigation was retraumatizing for the affected women and children.

In 2020, Ms. Scheele-Gertsen filed a lawsuit against the Netherlands alleging, among others, that the RvdK acted unlawfully by inadequately informing mothers of their rights and of the options to raise their children. The case was dismissed in the first instance on the merits, though the court commented that it also might be prescribed to the expiry of the 20-year statute of limitations under Dutch Civil Law. The case is currently in the appeals phase. In 2021, a motion was adopted by the Parliament, calling on the government to stop invoking any statutes of limitations in court cases regarding past domestic adoptions. In response, the Government rejected a general waiver, stating that it will apply a case-by-case assessment of whether the assertion of a statute of limitations defense is appropriate in individual civil liability claims.

In October 2022, a new Committee of Inquiry into Domestic Relinquishment and Adoption in the Period 1956-1984 was formed to launch an independent and scientific investigation into these practices. The Committee's findings are expected by 1 October 2024; however, its mandate still does not explicitly allow for an examination of the State's roles and responsibilities.

Without prejudging the accuracy of these allegations, we express concern that the harm and severe trauma suffered by women in forced adoption cases, which amount to psychological violence, have not been adequately addressed. It is a cause for significant concern that mothers affected by forced adoptions have neither received reparations nor recognition and that no speedy inquiry has been conducted on the State's involvement in these processes. Furthermore, the imposition of limitation periods in the legal proceedings concerning forced adoptions prevents any measure of meaningful accountability. The limitations also disregard the context in which forced adoptions occurred and the subsequent trauma that may have hindered mothers from pursuing claims.

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 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 above-mentioned allegations.

2. Please provide information on the status of the inquiry into allegations of inadequate protection measures concerning forced adoptions, specifically with regards to State involvement.

3. Please elaborate on the steps taken towards waiving the statute of limitations for forced adoption cases.

4. Please provide information on concrete measures to provide redress and reparations to mothers who were forced to give up their children for adoption.

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.

While awaiting a reply, we urge that all necessary measures be taken to assess the alleged violations and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability for 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.

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

Reem Alsalem
Special Rapporteur on violence against women and girls, its causes and consequences

Bernard Duhaime
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards relevant to the practice of forced adoptions.

The Declaration on the Elimination of All Forms of Violence Against Women defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

We would also like to refer you to article 23 of the International Covenant on Civil and Political Rights (ICCPR) ratified by the Netherlands in 1978 and wish to recall the general comment No. 19 (1990) on the protection of the family, the right to marriage and equality of the spouses (article 23) of the Human Rights Committee. Article 23 of the ICCPR recognizes that family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Article 17 of the ICCPR establishes a prohibition on arbitrary or unlawful interference with the family. In article 16(3), the Universal Declaration of Human Rights (UDHR) also states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Under various international and regional law instruments, including the UDHR (art. 8) and the ICCPR (art. 2), victims of serious human rights violations have the right to effective remedy and reparation. The principle of non-discrimination is stated in article 2 of UDHR and article 26 of ICCPR, with the latter guaranteeing that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds.

We also wish to recall article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by the Netherlands in 1991, which provides that the term "discrimination against women" to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Article 2 of CEDAW also notes the responsibility of States parties to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. Women subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, inform women of their rights in seeking redress through such mechanisms.

Furthermore, article 5(a) of CEDAW requires States parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women to eliminate practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Article 2(f) of CEDAW reinforces article 5 by requiring States parties to take all appropriate measures to modify or abolish laws, regulations, customs and practices which constitute discrimination against women.

We would also like to bring to your attention the joint general recommendation No. 31 of the CEDAW Committee and general comment No. 18 of the Committee on the Rights of the Child on harmful practices. Harmful practices are persistent practices and forms of behavior that are grounded in discrimination based on, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering. The harm that such practices cause victims have immediate physical and mental consequences as well as a negative and lasting impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status.

In general recommendation No. 19 (1992) on violence against women, the CEDAW Committee sets out specific punitive, rehabilitative, preventive and protective measures States parties should introduce to fulfil their obligations under article 2 of CEDAW. The CEDAW Committee makes clear that under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. The CEDAW Committee, in its general recommendation No. 33 (2015) on women's access to justice, recommends States parties to ensure that statutory limitations are in conformity with the interests of the victims.

In general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992), the CEDAW Committee acknowledges that gender-based violence against women is rooted in multiple factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, as well as the need to assert male control or power, enforce gender roles or prevent, discourage or punish unacceptable female behavior. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women and to the widespread impunity. The CEDAW Committee also states that reparations should include different measures, such as monetary compensation, provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and guarantees of non-repetition. Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered.

In its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, the CEDAW Committee states that victims must be ensured access to justice on the basis of equality and non-discrimination, including through the persecution of their perpetrators and the provision of remedies (CEDAW/C/GC/38, para. 42). States parties to CEDAW must provide appropriate and effective remedies, including restitution, recovery, compensation, satisfaction and guarantees of non-repetition to women whose rights under the Convention have been violated. As such, we bring to your Excellency's Government attention, the positive

obligations on the State of due diligence, of protection and of effective investigation and access to effective remedies, which should be fulfilled.

In addition, we would like to recall 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 General Assembly resolution 60/147, under which States must provide readily available, prompt and effective reparation to victims for the harm suffered. Furthermore, the document stated that domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

In the report on reparations to women who have been subjected to violence, the Special Rapporteur on violence against women and girls, its causes and consequences emphasized that women have historically been neglected in discussions of reparations despite the recognition of the right to remedy in international human rights instruments (A/HRC/14/22). The Special Rapporteur stressed that reparations should aim to be transformative. In this regard, complex schemes of reparations that provide a variety of types of benefits can better address the needs of female beneficiaries in terms of transformative potential, both on a practical material level and in terms of their well-being. Measures of symbolic recognition can also be crucial and can simultaneously address the recognition of victims and the dismantling of patriarchal understandings that give meaning to the violations.

According to report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/HRC/42/45), it is essential for the State and actors involved in the violations acknowledge their responsibility to fulfill the right to reparation. In another report, the Special Rapporteur stressed that domestic reparation programs are the most effective tool for victims of gross human rights violations and serious violations of humanitarian law to receive reparation (A/78/181). Adequately implemented domestic programs offer better options than courts to address the consequences of mass violations in a timely, efficient, victim-centered and inclusive manner.

Furthermore, we would like to refer to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ratified by the Netherlands in 2015, which provides in article 5(2) that parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of the Convention. We would also like to refer to article 8 of the European Convention on Human Rights (ECHR), ratified by the Netherlands in 1954, which guarantees the right to family life. The European Court of Human Rights (ECtHR) clarified that considerations for family unity and for family reunification in the event of separation are inherent in the right to respect for family life, and family ties may only be severed in exceptional circumstances to preserve personal relations (*Strand Lobben v. Norway*, No. 37283/13, ECtHR, 2019).

In any event, taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit. It cannot, therefore, be justified without prior consideration of the possible alternatives and should be viewed in the context of the State's positive obligation to make serious and

sustained efforts to facilitate the reunification of children with their natural parents and until then, to enable regular contact (*K. and T. v. Finland*, No. 25702/94, ECtHR, 2001). Regarding the authorization of adoption, such measure should only be applied in exceptional circumstances and could only be justified if motivated by an overriding requirement pertaining to the child's best interests.

In cases relating to public-care measures, the ECtHR considers the authorities' decision-making process to determine whether the measures have been implemented to ensure that the views and interests of the natural parents are made known to and duly considered by the authorities and for the natural parents to be able to exercise in due time any remedies available to them (*Abdi Ibrahim v. Norway*, No. 15379/16, ECtHR, 2021). Taking a decision on removal of a child, a variety of factors may be pertinent, such as whether by virtue of remaining in the care of its parents the child would suffer abuse or neglect, educational deficiencies and lack of emotional support, or whether the child's placement in public care is necessitated by the State for their physical or mental health (*Wallová and Walla v. the Czech Republic*, No. 23848/04, ECtHR, 2006).

We would also like to bring to the attention of your Excellency's Government the principle of non-discrimination and gender equality, which is underscored in article 14 ECHR and article 1 of Protocol No. 12 to the ECHR. With regards to discrimination on grounds of birth, the Court has set out that the State must act in a manner calculated to allow the family life of an unmarried mother and her child to develop normally (*Marckx v. Belgium*, No. 6833/74, para. 34, ECtHR, 1979). With regards to discrimination on grounds of sex, the Court has held that references to traditions, general assumptions or prevailing social attitudes in a particular country were insufficient justification for a difference in treatment on grounds of sex (*Konstantin Markin v. Russia*, No. 30078/06, ECtHR, 2012).