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Special representatives for children and the child's right to be heard – Considering the ban on female genital mutilation

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Abstract
This study examines the role of special representatives for children in Sweden. The research explores how the Act (1999:997) on Special Representatives for Children is applied, particularly in balancing investigative imperatives with children's rights under Article 12 of the Convention on the Rights of the Child. We have focused on cases involving suspected violations of the country's ban on female genital mutilation (FGM), but the result is relevant on a more general level. Drawing on interviews with legal professionals and an extensive archive of police investigations, the study highlights the complexities faced by special representatives in safeguarding children's rights while facilitating criminal inquiries. Findings reveal that although representatives play a crucial role in ensuring children's participation in legal proceedings, structural limitations often hinder their ability to fully uphold children's autonomy and best interests. The findings underscore the necessity of enhanced training and clearer guidelines for special representatives to navigate these challenges effectively.

Keywords
children's rights, special representatives for children, legal guardianship, female genital mutilation (FGM)

Introduction
When a child in Sweden is subjected to a suspected crime by their legal guardians, a special representative may be appointed to safeguard the child's rights during the preliminary investigation and subsequent trial. As a legal guardian, the special representative holds the authority to determine whether and how the child should be interviewed or medically examined during the criminal investigation. This determination must be guided by the child's best interests as a primary concern. The need for children to cooperate in criminal investigations must be balanced with the imperative to protect their personal and physical integrity. According to Article 12 of the Convention on the Rights of the Child, a child capable of forming their own views has the right to express those views freely in all

matters affecting them. The child's views must also be given due weight in accordance with their age and maturity.

This article examines the application of the Act (1999:997) on Special Representatives for Children, drawing upon interviews with special representatives and our archive of police investigations. We focus on cases where parents are suspected of circumcising their daughters, thereby violating the ban on female genital mutilation (FGM). In these cases, the human rights of the girls are particularly challenged, including sudden police pick-ups at school for questioning and genital examinations (Johnsdotter et al., 2025). Our study investigates how Article 12 of the Convention on the Rights of the Child is considered when the Act on Special Representatives for Children is applied.

Legal context

The right to be heard

The Convention on the Rights of the Child (CRC) was incorporated into Swedish law in 2020. During implementation, it became evident that Swedish law likely required reform to align with CRC obligations. Authorities were also responsible for clarifying the incorporation's implications in specific cases (Swedish Government, 2018). The limited regulatory guidance provided remains highly general (Swedish Government, 2019; Barnkonventionsutredningen, 2020). Consequently, the process has been criticized as "political problem dumping," shifting complex political issues to public authorities without sufficient interpretative support (Leviner, 2018, 2024).

The CRC's core principle is recognizing children as independent rights holders. The framework empowers children to participate in decisions that impact their lives, reinforcing their autonomy. Moreover, Article 12 mandates that states ensure children receive appropriate representation and support, assuring their meaningful participation in legal and administrative proceedings.

In its general comment on Article 12, the UN Committee on the Rights of the Child elaborates that procedures must be accessible and child-friendly. Environments and working methods should be adapted to the child's capacity, considering individual and social circumstances. The setting should foster a sense of safety and respect. The Committee emphasizes that children must be confident that interviewers will listen attentively and consider their views. Different children require varying levels of support, and the process should be structured accordingly. Adequate time and resources must be allocated to prepare children, fostering confidence in expressing their opinions. Furthermore, children must be informed about the subject matter, available options, possible decisions, and their consequences. Particular attention must be given to delivering child-friendly information, providing sufficient support, and ensuring appropriately trained staff. If a child communicates through a representative, it is crucial that the representative accurately conveys their views. Representatives must possess extensive knowledge of decision-making processes and experience working with children. They must solely advocate for the child's interests, avoiding external influences from institutions or public authorities (CRC, 2009).

Sweden has faced criticism for failing to meet Article 12's requirements. In its 2023 periodic review, the UN Committee on the Rights of the Child noted that children's views are not systematically considered in decisions affecting them. The Committee urged Swedish legislators to guarantee that all children can express their views and be heard in all legal and administrative decisions affecting them. Furthermore, it called for systematic training of professionals working with children, including those in the judiciary, to ensure

compliance with the right of children to be heard and have their views taken into account (CRC, 2023).

The special representative

The Convention on the Rights of the Child is mentioned only briefly in the materials leading up to the Act (1999:997) on Special Representatives for Children (hereinafter referred to as the Act). Instead, the discussion centered on the special representative as a restriction on parental rights, particularly in relation to the principle of proportionality. The discussion resulted in special representatives only being appointed in cases involving particularly serious offences by the guardians or in cases where there are concerns regarding the guardian's ability to prioritize the child's rights due to their relationship with a suspected perpetrator. (Swedish Government, 1988).

The Act, enforced in 2000, was a legislative response to a Parliamentary Ombudsman case. This case, where a father was suspected of sexual assault, highlighted the legal conditions for questioning and medically examining a child without guardian consent (Parliamentary Ombudsman, 1993). Existing regulations (Act (1988:609) on Plaintiffs' Counsel) stipulated that the plaintiff's attorney could not assume legal responsibilities belonging to the child's guardian (Swedish Government, 1988, p. 24; 1998 p. 12). When the guardian was the suspected offender, this arrangement posed clear challenges. Constitutional protections against forced bodily interventions (The Instrument of Government (1974:152) Chapter 2, Section 6) and against deprivation of liberty and other restrictions of movement (Chapter 2, Section 8) necessitated statutory exemptions allowing such measures in these cases (Chapter 2, Section 6).

During the Act's development, an alternative was considered—to instead introduce coercive measures for questioning and medical examination. However, this approach was rejected as it would excessively prioritize investigative interests over the child's best interests (Swedish Government, 1998 p. 19).

For a special representative to be appointed, suspicions must be sufficiently strong to warrant a preliminary investigation (The Swedish Code of Judicial Procedure (1942:740) Chapter 23, Section 1). Suspicions must be directed at one or both guardians and substantiated by concrete evidence. The assessment of suspicion strength may be influenced by statements from the child and observations from close contacts (Swedish Government, 1998).

A special representative shall not be appointed if deemed unnecessary for the child or if exceptional reasons argue against it (Section 1, Part 2 of the Act). For instance, if the child has attained the maturity to make their own decisions regarding medical examinations and interrogations, appointment may be unnecessary (Swedish Government, 1998 p. 41; NJA, 2004, p. 417). Determining whether a child can exercise this right must be done on a case-by-case basis (Swedish Government, 1998, p. 27).

If the child has two guardians who are not married or cohabiting and only one is suspected of a crime, the other must represent the child during the preliminary investigation and trial (Section 2 of the Act). However, if the guardians' relationship or other special circumstances suggest that appointing a representative would better serve the child's best interests, an external representative may be chosen. A custody dispute alone does not justify such an appointment (Swedish Government, 1998, p. 42).

Before appointing a special representative, a proportionality assessment must be conducted. Limiting a guardian's authority to represent the child constitutes an infringement of the right to private and family life under Article 8 of the European Convention

on Human Rights. Justification for such an appointment must outweigh this infringement and other potential disadvantages. If the alleged crime is minor, appointing a special representative may not be warranted (Swedish Government, 1998, p. 42).

Determining the child's best interests requires careful consideration. Investigative measures such as interrogations and medical examinations can be distressing, particularly if the child is without a family member. It is argued in the preparatory works that, while it is generally in the child's best interests that a suspected offence against the child is investigated, a special representative must not give consent to an investigative measure if the child is likely to suffer harm as a result—for example, if the child experiences intense fear. But, while the special representative is required to take the child's views and wishes into account, it is not the role of the special representative to make an independent assessment of the necessity of a given investigative measure. Accordingly, the representative may not withhold consent on the basis of a personal disagreement regarding, for instance, the evidentiary situation in the case (Swedish Government, 1998, pp. 27–29).

Balancing these conflicting interests requires specialized knowledge, experience, and personal skills. The Act stipulates that only "an advocate, a legal associate at a law firm, or other" may serve as a special representative (The Act, Section 5). The UN Committee on the Rights of the Child has emphasized the need for codes of conduct for representatives working with children. The codes should ensure that representatives are trained in children's rights and communication, actively listen to and advocate for the child's views, and guarantee that children are informed of their right to participate (CRC, 2009). The closest equivalent to a Swedish code of conduct can be found in a section of The Swedish Bar Association's document *The Lawyer's Assignment for Vulnerable and Marginalized Clients*, which addresses the duties of the special representative. These guidelines have a slightly different approach than the recommendations from the CRC. They are based on the idea that it is in the child's best interest for investigative measures to be carried out. The tasks of the special representative should therefore be focused on ensuring that such measures are implemented in a manner that best serves the child. The guidelines emphasize that the special representative must act in the child's best interests. However, they interpret this requirement to mean that although the child's views must be clarified and taken into account as far as possible when measures are undertaken, the child's instructions do not necessarily have to be followed. Instead, it is the lawyer's responsibility to determine what is in the child's best interests based on a comprehensive assessment and to act accordingly (Swedish Bar Association, 2020).

Criminal investigations risk violating the rights of crime victims, but this risk is particularly pronounced in cases involving the FGM ban. Victims are typically young girls from vulnerable minority groups, the investigations require highly sensitive genital examinations, and the girls' testimony may result in parental incarceration. The special representative, with their extensive safeguarding role, has a critical function here. Their task entails a complex balancing act: protecting the child's rights during criminal investigations while facilitating the investigation and prosecution of such cases.

The FGM ban

Sweden was the first Western country to enact a specific law criminalizing FGM through the 1982:316 Act Prohibiting Female Genital Mutilation. This legislation prohibits interventions on female external genitalia intended to mutilate or cause permanent changes, regardless of consent. In 1999, the requirement of double criminality for offenses committed abroad was abolished. Since then, it has been possible to prosecute FGM

carried out outside Sweden, even if it was legal in the country where it took place (Swedish Government, 1999). Five cases have been prosecuted, leading to three convictions—two for illegal FGM and one for conspiracy (Johnsdotter & Wendel, 2025a). No documented cases of FGM have been performed in Sweden.

The World Health Organization defines FGM as "all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons" (WHO, 2025) and classifies the practices into four types, covering the variations from partial or total removal of the clitoral glans to piercing. FGM remains prevalent in approximately 30 African countries, as well as in parts of Asia and the Middle East (WHO, 2025; Johnsdotter & Wendel, 2025b).

Research overwhelmingly demonstrates that migrants anticipating a permanent future in the Global North tend to abandon FGM. Most migrants reject perpetuating this painful tradition. Several studies indicate a significant cultural shift in the Global North (e.g., Agboli et al., 2020; Besera et al., 2022; Johnsdotter, 2019; Wahlberg et al., 2019; Salah et al., 2024). Given this cultural shift, it is unsurprising that only a few FGM-related criminal cases have been reported in Western societies (Johnsdotter & Wendel, 2025a).

Despite the limited number of confirmed illegal FGM cases involving migrants in Sweden, extensive efforts focus on detecting and addressing potential violations. These initiatives stem from dominant societal narratives, often perceived as irrefutable truths. A prevailing sentiment suggests that FGM occurs widely among Swedish migrants and that intensified efforts by police, prosecutors, and social services would expose hidden cases. In a public statement, Sweden's Child Ombudsman and the equality spokesperson for the Liberal Party emphasize: "We must stop turning a blind eye when girls undergo female genital mutilation". "As long as abuses persist within Sweden, a more decisive response is imperative from both political leaders and governing bodies. These young girls should not be failed by our healthcare and justice systems. We must redouble efforts to safeguard those vulnerable to FGM" (Blom & Elving, 2021). Similar calls for increased surveillance and stricter measures exist in other Western countries (Creighton et al., 2019; Moses, 2019).

The strong normative opposition to FGM fosters cultural change. But the cultural shift is also a result of changing social structures, such as reducing reliance on extended family networks due to increased public social security. However, the cultural transformation experienced by affected girls and their families is often unacknowledged. Instead, the demand for a "decisive response," as described above, risks silencing the voices of those directly impacted. Individuals from these migrant groups frequently face skepticism and mistrust, often being categorized as members of "suspect communities" (Carver et al., 2023, p. 10; Johnsdotter & Wendel, 2025a).

Previous research on special representatives

The role of the special representative in Sweden has been largely overlooked in research. The only example focusing on special representatives is Forsman, 2017 study. Based on preparatory works and policy documents, it examines the special representative's role in Barnahus [Children's House], a multidisciplinary investigative model where the child encounters criminal and welfare authorities in a coordinated setting. Forsman highlights how the role is shaped by context, as the child serves as a crucial source of evidence. The special representative's primary task is to facilitate the availability of this evidence for the investigation. Other child-related interests, such as medical or psychological needs, may be overlooked (Forsman, 2017).

Thunberg et al. have compared the societal protection offered for minors who are victims of crime in Sweden and Germany. They conclude that Sweden's system, centered on dedicated special representatives and Barnahus-style coordination, is more robust and standardized. Germany, while having legal frameworks in place, lacks consistent application and service integration. This study advocates for Germany and similar jurisdictions to adopt more centralized, multidisciplinary models (Thunberg et al., 2020).

Nevertheless, research in comparable fields indicates a trust gap between society and vulnerable children and an urgent need for child-based approaches also in Sweden. Children tend not to disclose experiences of victimization. A study examined disclosure of child physical abuse (CPA) and perceived adult support, using mixed-method data from a nationally representative survey of Swedish adolescents (n = 3,202). Among those reporting severe CPA, 52% had disclosed the abuse, most commonly to a peer or sibling; only 11% disclosed to professionals. Non-disclosure was primarily linked to lack of trust in adults, and several adolescents reported inadequate professional responses due to the absence of a child-centered approach (Jernbro et al., 2017). A similar large-scale survey (n = 3,282) conducted among third-year upper secondary school students in Sweden, focusing on sexual abuse, found that the majority had not disclosed the incident. Among those who had, most confided in a peer. Of the minority who sought professional help, half reported being satisfied with the response, while one-third expressed dissatisfaction (Landberg et al., 2022).

The appointment of a special representative is considered the most significant factor in facilitating child abuse investigations (Swedish Prosecution Authority, 2010; Kaldal, 2015; Forsman, 2017), and the introduction of the Act appears to have enhanced authorities' ability to investigate parental crimes (The Child Ombudsman, 2012; Forsman, 2017). Collaboration within a Barnahus facility also correlates with more frequent special representative appointments compared to investigations conducted elsewhere (54% vs. 39%) (Kaldal et al., 2010).

A 2013 review of Barnahus centers by Save the Children revealed that staff sometimes questioned the role and function of special representatives. At one Barnahus, they were perceived as too passive and uncomfortable interacting with children. At others, instances were reported of special representatives halting interrogations or medical examinations deemed not in the child's best interest. However, such cases were considered exceptional (Landberg & Svedin, 2013).

An interview study with prosecutors regarding cases of child sexual abuse found that informants generally valued the child being represented by an independent legal party, particularly to prevent parental influence. However, several noted that acting as a special representative held low professional status, often delegated to the youngest or least experienced members of a law firm. Some representatives were also perceived as insufficiently committed to the child (Back et al., 2013).

A detailed analysis of children's experiences at Barnahus, based on interviews with children, parents, and appropriate adults, presents a complex view of the special representative. While expected to serve as legal aid, ensuring the child's rights and integrity, the representative also acted as a guide through the criminal process. Some children referred to this person as "my lawyer," which the researcher interpreted as an indication that they understood that the representative was there for them. However, approaches varied—some representatives connected effectively with children, while others maintained a more formal stance (Kläfverud, 2021).

Article 12(2) of the CRC grants individual states considerable discretion in determining the arrangements for children's representation, leading to substantial variation both across and within jurisdictions. These variations may concern, for example, the types of cases in which representation is provided or who is eligible to serve as a representative (Mol, 2019). The diversity complicates comparative research (Haarberg, 2024). The international academic debate on the legal representation of children focuses on whether a best-interest model or a client-oriented model of representation is preferable (e.g., Lundy et al., 2019). While the latter model centers on legal representation guided by the child's instructions, the former gives the state or the representative greater scope to assess the child's best interests. The debate reflects the tension between Article 12 of the CRC and Article 3 on the child's best interests. The best-interest model is often criticized for giving the representative too much discretion in assessing what is in the child's best interests, thereby introducing paternalistic tendencies (Malempati, 2013).

Another strand in the research focuses on the emotional bond between the child and the representative, emphasizing the need for a caring advocacy (e.g., Barnes, 2007). From a broader perspective, the situation in which a special representative acts on behalf of a child is also one in which society presents itself to the child. Ideally, such a situation may provide a window into a deeper understanding of democracy and justice (Tchermalykh, 2023).

Methods

This article examines how special representatives uphold the child's right to be heard, as articulated in Article 12 of the CRC, particularly in cases involving suspected violations of Sweden's FGM ban. Our conclusions are based on an analysis of two types of material beyond traditional legal sources, including legislation, preparatory materials, case law, and literature.

We have access to an extensive paper-based archive containing nearly all Swedish criminal investigations into suspected FGM since the legal ban's introduction in 1982. The first police report and subsequent investigation occurred in 1996. Our archive of police reports, extending to 2022, encompasses 230 cases. Since 2000, when the Act on Special Representatives was introduced, 225 cases have been recorded. These investigations form the basis of this article's analysis. We searched the archive for documentation of the special representation speaking out on behalf of the girl, challenging investigative measures, such as genital examinations, or actively safeguarding the rights of the child in any other way.

Additionally, we interviewed seven lawyers with current or past experience as special representatives. Participants were selected through snowball sampling, beginning with personal contacts. Experience as a special representative was the sole inclusion criterion. Interviewees had between two and fifteen years of experience, with three having handled FGM-related cases. They represented both rural and metropolitan areas across Sweden. Two were men, and five were women.

Interviews were conducted via Zoom in 2022 and 2023. The semi-structured format followed a guide covering education, professional experience, the role of special representatives, and ethical considerations regarding codes of conduct, balancing conflicting interests, and the child's best interests. Open-ended questions encouraged narrative responses. Each interview lasted approximately one hour and concluded with a discussion based on two vignettes drawn from police investigations in our archive. One raises the issue of the principle of proportionality and includes a quotation from a prosecutor instructing the investigating officers to act proportionally towards the family in

question. The other is an excerpt from a forensic report, illustrating the challenges of proving that female genital mutilation has occurred. With these vignettes, our aim was to steer the discussion towards practice-oriented difficulties encountered in case handling. All interviews were recorded and transcribed. The number of interviews conducted is relatively limited, but theoretical saturation was reached following the completed conversations. The individual interviews turned out to be very similar, with the appointed special representatives expressing comparable experiences and approaches, with minor variations, regardless of gender, location, and previous experience. Quotations are attributed to individuals, but in practice they could apply to any of the interviewees. Any statement that significantly deviates from the overall pattern is explicitly noted.

In addition to the interviews, we also made ethnographic observations during two collaborative meetings at Barnahus, when cases regarding children were discussed among professionals from different authorities. The observations, though not visible in the analysis, have contributed to our general understanding of the role of the special representative.

For analysis, we applied Shier's model of children's participation, which served as the frame for our thematic evaluation. Shier's model includes five levels of participation: (1) children are listened to, (2) they are supported in expressing their views, (3) their views are considered, (4) they are involved in decision-making, and (5) they share power and responsibility in decision-making. This article focuses on the first three, as they are prerequisites for fulfilling Article 12 obligations. Shier also identifies three stages of commitment at each level: an *opening* occurs with intent to involve the child, an *opportunity* arises when necessary resources exist, and an *obligation* is established when inclusion is systematized (Shier, 2001). We employ Shier's model for its feasibility while recognizing the significance of other participatory rights in the CRC and other dimensions of participation (Lundy, 2007; Hanna, 2022; Gottschalk & Borhan, 2023).

Lundy (2007) critiques participation models—such as Shier's—for being overly adult-driven, where children's agency is constrained by adult "permission" rather than enabled through supportive institutional structures. This argument is compelling, particularly when focusing solely on participation. But children's rights are often categorized into three groups, commonly referred to as the "3 Ps": protection (i.e., safeguarding their rights), provision (e.g., access to essential services), and participation (i.e., being actively involved in decision-making processes) (Habashi et al., 2011). While Shier's model primarily addresses participation, it also supports aspects of protection and provision, which are of particular relevance to the role of the special representative. The special representative is supposed to ensure not only that the child is heard (participating), but also that the child's rights are protected and that the child has access to essential services (provision). Particularly when the allegedly affected girl is very young, it becomes unavoidable that the appointed special representative is an adult expected to guide her through a legally complex context. In such cases, the question of participation extends beyond merely ensuring agency.

Results

Appointing a special representative appears standard practice in cases involving suspected violations of the FGM ban. A representative is appointed in every substantial case. We found no instance in our police investigations where a guardian was assigned the role instead. Even when only one parent is suspected and the parents live separately, the

documentation in our archive suggests that FGM is considered a crime necessitating an independent representative for the child.

Preparedness to listen to children?

At this basic level in Shier's model, the child must express a view, and if they do, it must be given due attention (Shier, 2001). We began this investigation with the hypothesis that stronger beliefs in large-scale illegal FGM in Sweden would increase the likelihood of special representatives accepting privacy-infringing investigative measures, such as consenting to medical genital examinations without the girl's consent. This perspective might also influence their willingness to listen to the child. We therefore asked special representatives about their perceptions of illegal FGM in Sweden and the extent of underreporting. Previous analyses of interviews with Swedish police and prosecutors revealed widespread beliefs that illegal FGM is common but well-concealed. Law enforcement officials asserted that "the lack of signs of FGM is in no way evidence that FGM has not occurred." Many believe that FGM persists among certain immigrant groups, albeit in milder forms to evade detection (Johnsdotter & Wendel, 2025a). This belief may contribute to what has been referred to as "subtle, unconscious, automatic discrimination" in the justice system (Shannon & Törnqvist, 2008).

However, among the interviewed special representatives, perspectives diverged from law enforcement discourse. Only one interviewee shared similar views, describing FGM in Sweden as "a fairly extensive problem" and using the term "slaughter" to characterize the practice (Interviewee no. 1). This individual argued that migrants from clan-based societies would continue FGM regardless of legal prohibitions. One vignette used in the interviews concerned a prosecutor's instruction to police investigating suspicions arising from a diaper change at a preschool:

> As I see it, we don't risk much by speaking with the parents. It could be a medical condition they are aware of. Should this be a crime, the girl provides the evidence. Examining such a young child so invasively requires well-founded suspicions. Please let me know if there are any questions along the way. Be sensitive in approaching the parents, who I perceive as newly established in Sweden—it could be perceived as abusive when the police inquire about the child. There may be entirely natural explanations for the observations made by the preschool staff.

This statement was met with skepticism from the interviewee, who questioned "whether investigative measures should be omitted due to what [they] perceive as special considerations for new migrants" (Interviewee no. 1). However, no further indications suggested this special representative acted differently than others, who all refrained from drawing conclusions on FGM prevalence or underreporting, citing insufficient knowledge.

Some had prior experience as legal counsel for asylum seekers, where concerns about FGM arose in deportation cases. In such cases, risk of FGM can constitute grounds for asylum, assuming the girl is not already circumcised. These representatives did not assume girls from FGM-practicing regions had undergone the procedure after arriving in Sweden. Based on our interviews, no uniform approach to suspected violations of the FGM ban among special representatives can be identified.

Generally, special representatives appeared willing to listen to children. However, their focus often centered on the child's possibility to narrate events rather than reflect on legal proceedings, upcoming interrogations, or medical examinations. The presumption was

that these measures would be carried out. Consideration of the child's self-determination would arise only if the child actively objected. One special representative describes the approach thusly:

> My starting point is always that it is in the child's best interest that the investigation is carried out. That mindset is fundamental, until something happens—such as a child refusing to participate or a police officer mishandling the case—making it evident that this was not a good experience. (Interviewee no. 4)

A prevailing discourse suggests that special representatives are often inexperienced lawyers at the law firm (e.g., Back et al., 2013). However, our interviews did not confirm this. Most interviewees were well-established lawyers, with broad experience. Only one of them had not yet been admitted to the Swedish Bar Association, but expected to enter in the near future. They did not take on the assignments due to a lack of other, more prestigious tasks, but because they found the work engaging and meaningful. Several emphasized that courts assess a lawyer's suitability for the assignment based on prior experience and training in child-related cases. Yet, as one interviewee noted, prior experience does not necessarily equate to suitability.

Even when representatives are prepared to listen to children, structural constraints may limit their ability to accommodate children's needs. The timeframe between appointment and the first meeting with the child is extremely short. The prosecutor requests for the court to appoint a special representative as soon as the preliminary investigation begins (Swedish Prosecution Authority, 2023). The assignment starts once the representative accepts, after considering potential biases—particularly in rural areas where personal connections pose a higher risk. Interviewees described the process as rushed, leaving no time to establish a rapport with the child. One cited the policy requiring legal guardians (parents) to be informed of suspicions within two days, necessitating an interrogation before then. The primary focus is on ensuring the child's participation in interrogation. This finding aligns with Forsman's previous research, which shows that the child is regarded as central evidence and the child's other needs may be overlooked (Forsman, 2017).

When asked about the laws and regulations governing their role, only one interviewee mentioned the CRC, though several referenced key legal concepts from the CRC, including the child's best interests. Many referred to the Bar Association's guidelines, which emphasize the importance of listening to children in the light of their age and maturity. A strong child-lawyer relationship is deemed crucial for expressing the child's views, yet the guidelines also stress that investigative measures should generally proceed. The Act, developed alongside discussions on incorporating the CRC into Swedish law, only vaguely references the right to be heard.

If a child expresses unwillingness to participate in an interrogation or a medical examination, the special representative must consider this when assessing whether the procedure should proceed. However, this assessment must also account for the importance of investigating criminal suspicions, ensuring the child's protection, and providing necessary support. The legislation assumes investigative measures serve the child's best interests (Swedish Government, 1998).

To sum up this first stage in Shier's terminology, the interviews reflect a clear *opening*, as the special representatives express a general readiness to listen to the children. However, the

opportunity may be questioned due to limited time frames. The *obligation* is also uncertain, as the strong emphasis on facilitating the criminal process may lead to the child's right to be heard being overlooked when the child's role as key evidence is prioritized.

Are children supported in expressing their views?

The second level of participation in Shier's model concerns proactive measures and methodologies to facilitate children in articulating their perspectives (Shier, 2001). There is no formally documented methodology in Sweden guiding how special representatives should interact with children. However, their approaches appear largely consistent across comparable situations, suggesting the emergence of an informal, practice-based framework.

In 2008, the Swedish Bar Association reprimanded a lawyer for failing to accompany a girl when the police collected her from school for a medical examination following suspicions of FGM (Swedish Bar Association, 2008). However, among the interviewees, accompanying the child throughout legal proceedings was deemed essential. The special representatives indicated a clear commitment to being available and providing support should questions or concerns arise. However, the lack of clear guidelines or structural methodologies here was obvious. Many interviewees instead referenced their own parenting experiences as a guiding framework.

Upon appointment, the special representative contacts the police for case details. Some also reach out to school principals or preschool staff to coordinate the child's collection. In consideration of the child's best interests, an appropriate adult—someone familiar to and trusted by the child—is also often asked to accompany the child during transportation. Before an interrogation, the police investigator or the special representative liaises with the school or another relevant institution to determine the most suitable escort. Many special representatives actively engage with this adult to plan how best to transport the child. Some school principals require a preliminary meeting before allowing access to the child. One special representative regularly consulted social services beforehand to gather background information on the family and assess the child's maturity.

Considering age and maturity, the child must be informed in advance about the purpose of questioning, the location, and the process. Ideally, this information should be conveyed by the special representative. Many interviewees provided minimal details during the initial contact, describing it as a brief exchange – maybe taking the child's age into account: "I introduce myself and explain, 'You are going to the police, but they are the kind of police who talk to children about their home life. Today, they want to speak with you'" (Interviewee no. 6).

Many relied on the appropriate adult, often a teacher, counsellor, or school nurse, to act as a gateway to the child: "They feel secure with the appropriate adult. I establish rapport with that person first, and then, through them, I make contact with the child, saying something like, 'Hey, now we're going'" (Interviewee no. 1).

Special representatives generally reported positive collaboration with relevant authorities, fostering a supportive environment conducive to upholding the child's right to be heard. One noted: "I was surprised by how well cooperation worked between me as a special representative and all the involved authorities" (Interviewee no. 7).

Interviewees had experience with interrogations conducted both at Barnahus and standard police facilities. The Barnahus model, introduced as a pilot project by the Swedish Ministry of Justice in 2005, has become the predominant approach for handling child victims and witnesses. It operates at the intersection of child welfare and criminal

justice, ensuring that multiple authorities engage with the child within a single setting. Law enforcement, child protective services, and medical and mental health professionals collaborate to assess the child's situation and determine necessary follow-up actions. Designed to be child-friendly, Barnahus features bright colors, toys, and staff trained to safeguard children's rights, including their right to be heard (Johansson et al., 2017). Special representatives valued this model, particularly the familiar environment and continuity of staff, which they viewed as vital for the child's well-being. It was widely regarded among the interviewees as a significant advancement in child investigations and a key component of professional practice.

An unexpected yet persistent area of debate concerned transportation arrangements for interrogations. Specifically, whether the special representative should personally transport the child, arrange a taxi, or use public transport. This issue impacts the child's right to be heard, as unpredictable questions may arise during the journey. Taxis or public transport may be unsuitable due to privacy concerns. In smaller towns, where lawyers are more recognizable, appearing in public with the child may also be inappropriate. The Swedish Bar Association emphasizes that special representatives are not required to arrange transportation themselves but must ensure appropriate conditions for the child's attendance at hearings or medical examinations. If private transport is unavoidable, legal and insurance implications must be considered (Swedish Bar Association, 2020). The Swedish Prosecution Authority advises that an appropriate adult should accompany the child to ensure their well-being and sense of security (Swedish Prosecution Authority, 2023). Interviewees frequently discussed transportation challenges. Some felt pressured to use private vehicles, occasionally expressing concerns about traffic risks. Others opted for taxis but encountered criticism from the police, who feared potential breaches of confidentiality during these transportations. One special representative described maintaining complete silence during transport to avoid revealing case details to the driver, but questioned how this lack of interaction affected the child, given the limited time spent together.

This second stage in Shier's terminology is crucial, considering the research demonstrating the reluctance of young people to disclose experiences of victimization and the need for trust building measures (Jernbro et al., 2017; Landberg et al., 2022). Again, this stage entails an *opening*, a willingness to interact with the child, but the existence of a real *opportunity* is questionable due to the lack of methodological rigor. Instead, the special representative is dependent on other actors, e.g. an appropriate adult and the professionals at Barnahus. With these additions, the end result may be a beneficial situation for the child, but it is still conspicuous that the person who has the main responsibility for safeguarding the child's best interests isn't expected to have a systematic strategy to connect with the child. The benefits of the collaborative and multidisciplinary functions of Barnahus have been emphasized in several contexts (e.g. Kaldal et al., 2010; Johansson et al., 2017; Thunberg et al., 2020), but the special representative still has an important role to play here. Accordingly, the guidelines from the Swedish Bar Association would benefit from the inclusion of an *obligation* that special representatives are trained in children's rights and communication, as the UN Committee on the Rights of the Child suggests.

Are children's views taken into account?

This third level in Shier's model requires a process that ensures children's views are given due weight, considering their age and maturity. Achieving this level is essential to fulfilling the obligations outlined in the CRC (Shier, 2001).

According to the legal provisions, the special representative's actions must be guided solely by the child's best interests, ensuring their rights and dignity are upheld throughout the legal process (Swedish Government, 1998, p. 42). The Bar Association underscores the need to conduct investigative measures in a manner prioritizing the child's well-being. If a child exhibits significant distress before an interrogation or medical examination, the setting should be adapted to be as comfortable as possible. In some cases, postponing the procedure may reduce anxiety. Special representatives must also carefully evaluate the necessity of medical examinations, considering whether the expected findings justify subjecting the child to such procedures. If insufficient grounds exist to suspect abuse, the examination may not be warranted (Swedish Bar Association, 2020).

In practice, as described above, special representatives generally perceive their role as implementing investigative measures as prescribed by law enforcement, even when this presents dilemmas. One of the interviewees said: "Of course, I want the investigation to be as thorough as possible if it benefits the child, while also ensuring the child does not endure a distressing experience. It must be conducted professionally, and in the child's best interest" (Interviewee 3).

Most investigative measures also proceed as planned. But older children may require encouragement to participate. However, though rare, some categorically refuse, and special representatives acknowledge that such refusals must be respected: "For instance, an older child, around 12, might say, 'I don't want to go to the police. I won't go.' You try to explain and persuade, but if the child refuses, coercion is not an option" (Interviewee 3).

Two special representatives described encountering frustration from the police in such situations. Failing to facilitate the investigation may result in being perceived as unprofessional or disloyal.

While the special representatives emphasized that police officers conducting child interrogations are generally skilled and sensitive, some also recounted negative experiences. However, intervening in an interrogation from an observation room is considered a significant step, leading to hesitation. Nonetheless, it does occur, for instance, when a child needs a break, when the interrogator fails to create a safe environment, or when the language used is too complex.

The greatest frustration arises when a special representative believes a child is in danger but still remains silent during the interrogation. The interviewees described concerns that a child's right to be heard is compromised when questioning is either too rigid or too open-ended. One elaborated on the child's right to be heard: "This right assumes that the questions are asked in the right manner and that the person conducting the interrogation is very well experienced in talking to children. Otherwise, you will talk a lot with the child about their Lego, like, and not about the possible crime or what happened to them" (Interviewee no. 5).

A medical examination is considered more invasive than police interrogation. If intended for forensic purposes, the child must consent. If the child lacks the maturity to do so, the special representative decides. Interviewees stressed the importance of building trust with the child in these situations to properly assess their well-being. However, this process was considered challenging, if the child hesitated to participate. One special representative described a case involving suspected FGM: "It's not an easy decision. In most cases, you can engage the child in a conversation. In this particular instance, we had a constructive dialogue. Since the child's view aligned with what I believed was in her best interest, the decision was not problematic" (Interviewee 1).

All of the interviewees highlighted the importance of the appropriate adult's participation. One special representative suggested that the appropriate adult should play a key role in determining whether and how the examination should proceed: "I think the appropriate adult should accompany the child for security reasons, and I like to discuss with them separately to understand their perspective on the examination" (Interviewee 5). Other representatives were more cautious, observing the risk of sharing too much information.

Among our case files, only three instances show a special representative failing to facilitate the investigation or refusing consent for investigative measures. In a 2021 case, a special representative was unable to bring two sisters to the police after informing them of concerns about their home life. Both girls insisted they were happy and refused to participate. The initial suspicions were later deemed unfounded, and the case was closed (Case 2021:5). A 2018 case involved a special representative refusing to consent to a child's questioning. An 11-year-old girl, during a routine school health examination, appeared to disclose that her older sister had been circumcised and that she was also expected to undergo the procedure. However, after speaking with the older sister—who denied being circumcised—the special representative objected to further questioning. During the younger girl's police interview, it became evident that she had misunderstood the health examination's questions, associating them with menstruation. The investigation was subsequently closed (Case 2018:123). In a 2015 case, a special representative declined to consent to medical examinations. A Somali boy reported physical abuse by his father, leading to suspicions of FGM regarding his sisters. Although the children were interrogated, no substantial evidence emerged. The special representative opposed medical examinations, and the police investigation was closed (Case 2015:73).

In these three cases, the girls' refusal to participate does not appear to have directly influenced the decision to close investigations, as the initial allegations were weak. On the other hand, in one of the five cases that have proceeded to trial in Sweden, charges were filed despite the girls' refusal to undergo genital examinations (Court of Appeal, 2022). This suggests that the relationship between coercive measures and prosecutable cases is complex.

In terms of children's participatory rights, the interviews and our case files show that children's views are taken into account to a certain extent. The interviews reflect an openness to the child's view. The *opening* is clearly there when it comes to older children. There is also an *opportunity*, even if unwillingness to consent to participation may provoke adverse or uncomfortable responses from law enforcement. The *obligation* is also there, since both the legislation and the guidelines make the obligation clear.

However, while the preparedness to listen to children, as well as the support for them to express their views, is lacking, this has implications for the content of the views that can be taken into account. If the children aren't provided with sufficient means to express themselves, there is not much to take into account.

Conclusions

Research on the role of special representatives for children in Sweden has been minimal. The special representatives are portrayed in varying light, sometimes too passive and uncomfortable interacting with children (Landberg & Svedin, 2013), sometimes too formal, and other times as connected with the child in a genuine and warm light (Kläfverud, 2021). As far as we know, this is the only empirical study that has ever been done targeting special representatives in Sweden. The study highlights the complex

role of special representatives in safeguarding children's rights while facilitating criminal investigations. Although a small sample, the special representatives who participated in our study practice in different parts of the country, are of different ages, and have different experiences. Some had worked with FGM-related cases, others had not. Their responses were, however, conspicuously homogeneous.

In this study, FGM was used as an example. The findings show that, unlike other professional groups (Johnsdotter & Wendel, 2025a), special representatives do not appear to be particularly influenced by the broader societal discourse surrounding this crime. Instead, their practice was primarily guided by the formal demands following from the Act and the guidelines issued by the Bar Association. The normative position in these legal texts is that the representative's main task is to facilitate the criminal investigation, and the representative isn't supposed to make an independent assessment of the necessity of a given investigative measure, and may not withhold consent on the basis of a personal assessment of, for instance, the evidentiary situation in the case (Swedish Government, 1998, p. 29; Swedish Bar Association, 2020). In line with this stance, the special representatives often interpret the child's right to be heard rather narrowly, focusing on the child's ability to narrate events rather than meaningfully engage in legal decision-making (Forsman, 2017). Here, ensuring that the child speaks during the interview or participates in a medical examination is considered more important than involving the child in the decision about whether to participate at all. The reliance on an appropriate adult and staff at Barnahus for communication and support suggests that the special representatives function more as legal facilitators than as advocates for the child's autonomy. The responsibility for providing an emotional bond and caring advocacy (see Barnes, 2007) is therefore placed elsewhere, rather than with the special representative.

Accordingly, the legal framework for the special representative favors a best-interests approach, rather than a model where the representative follows the child's instructions (compare Lundy et al., 2019). The child's views are to be clarified and taken into account as far as possible, but ultimately the aim is to ensure that the investigative measures are carried out (Swedish Government, 1998; Swedish Bar Association, 2020). The special representatives were also found to work in accordance with a best-interests model and operated on the basis that it is in the child's best interests for the police investigation—including any coercive measures involved—to be conducted. Although they acknowledged the child's right to be heard, it is clear that the child's best interests took precedence over the child's instructions. This applied as long as the child did not clearly and emphatically object.

We have found only a small number of cases in which the special representative actively prevents an intervention, e.g. a genital examination, by the law-enforcement authorities. The special representatives themselves also describe such situations as rare exceptions. Several also highlight the negative reactions from police, if the special representative is unable to secure the child's cooperation in the investigation.

Even though the findings suggest that special representatives largely align with law enforcement's investigative needs, however, they still navigate dilemmas regarding the child's participation, privacy, and best interests. Building upon Shier's model of children's participation (Shier, 2001), the interviews give the impression of several openings towards support for children in expressing their views and taking them into account, but the opportunities are limited due to time frames, limited opportunities for rapport-building, a lack of systematic strategies, and the possibility of negative reactions from law enforcement. This study underscores the need for clearer guidelines and enhanced training for

special representatives, especially regarding children's rights and communication with children, to ensure they can effectively navigate the tension between investigative priorities and the child's right to be heard. Strengthening this role is essential for upholding both due process and children's rights to be heard in sensitive legal proceedings.

As other studies have indicated, the legal framework in Sweden, centered on dedicated special representatives and Barnahus-style coordination, appears robust and well-functioning (Thunberg et al., 2020). In practice, however, children still report inadequate professional responses and the absence of a child-centered approach (Jernbro et al., 2017; Landberg et al., 2022). The Act on Special Representatives for Children was introduced in 1999, and although Sweden had already ratified the CRC at that time, the Convention had not yet been incorporated into national law. The sparse references to the CRC in the preparatory works do not include any mention of Article 12, and instead appear to focus primarily on potential infringements of parental rights. This may have contributed to a situation in which the application of the Act has not fully realized its child-friendly potential.

Although the focus for this study has been cases of suspected FGM in Sweden, the result has a wider relevance. The interviews indicate that these cases are treated in a manner similar to other cases where legal guardians are suspected of crimes against their children. The article can therefore be assumed to speak more to the general conduct of special representatives than to these specific cases. The interviews reflect the general problems that special representatives encounter where they are often placed in a difficult position, balancing legal obligations with ethical considerations regarding children's autonomy and well-being.

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Data availability

Due to applicable confidentiality regulations, the data underlying this study cannot be made publicly available.

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