

UNITED NATIONS



NATIONS UNIES

**KEY PRINCIPLES
FOR THE PROTECTION, REPATRIATION, PROSECUTION, REHABILITATION
AND REINTEGRATION OF WOMEN AND CHILDREN WITH LINKS TO
UNITED NATIONS LISTED TERRORIST GROUPS**

APRIL 2019

**THE SECRETARY-GENERAL****FOREWORD**

With the territorial collapse of the “Islamic State of Iraq and the Levant” (ISIL), thousands of people -- many of them women and children -- with links to United Nations-listed terrorist groups are either stranded in crowded camps or detained in the Syrian Arab Republic and the Republic of Iraq, with limited access to food, medical care, due process and other fundamental rights and services. Similar challenges are present in Somalia, Libya and the Lake Chad Basin. These people, especially the women and children, have often experienced extreme violence and exploitation, and may have had little say in the decisions affecting their lives. They are also at heightened risk because of their close proximity to members of designated groups while detained or in camps.

Some Member States are engaged and ready to repatriate their nationals, while others are yet to develop clear policies on how to handle such cases. In confronting these difficult circumstances, all policies and actions that lead to statelessness must be avoided, and all policies and actions related to children should be firmly based on the principle of the “best interests of the child”. Moreover, it should not be assumed, without due process and adequate protections, that these women and children have been actively participating in or supporting the activities of such groups. Otherwise, we risk compounding the trauma and continuing the cycle of violence for generations to come.

The United Nations system must leverage existing UN capacities and come together to better support Member States in addressing this complex challenge. All United Nations assistance is provided in accordance with relevant General Assembly and Security Council resolutions, and in line with all relevant international laws and United Nations regulations, rules, policies and procedures. This set of principles intends to enhance the coherence of United Nations action in this area in order to meet the needs of Member States and, most of all, of the people involved.

A handwritten signature in black ink, appearing to read 'António Guterres', with a long horizontal flourish extending to the right.

António Guterres
Secretary-General of the United Nations
March 2019

Background

The situation facing women and children with links¹ to United Nations listed terrorist groups is increasingly untenable. There is an urgent need to identify and implement solutions, which must acknowledge the distinct profiles of the individuals concerned and be specific to the immediate, medium- and longer-term challenges facing the countries and communities involved. The solutions needed go well beyond the immediate response to humanitarian needs and cannot be provided by humanitarian actors alone. Necessary measures include political engagement; repatriation; justice; prosecution (where appropriate), rehabilitation and reintegration; access to psychological expertise and support services; and consideration of security issues. This requires the engagement of Member States and other relevant actors, including civil society.

The United Nations has a responsibility to support Member States to comply with their obligations under international law. There are specific international law obligations applicable to Member States' action with regard to women and children with links to UN listed terrorist groups. However, UN agencies and other humanitarian actors engaged on the ground are faced with multiple challenges, including those of a political and practical nature.

Although some Member States have begun repatriating women and children, the pace of repatriation is slow, marked by unclear processes, and contingent on the availability and willingness of the Member State to provide consular services. The fate of these women and children often depends on the application of national laws, the level of protection they are granted (including international protection) and the approaches of the host countries and countries of origin to deal with this complex issue.

This situation is further complicated in practice as many children do not have legal documentation, are orphaned, or, are either accompanied by foreign mothers or fathers whose fates are uncertain or separated from their parents or responsible caregivers. Many of these women and children have been subjected to human rights violations and abuses and exposed to extreme acts of violence, with little or no access to appropriate medical, psycho-social and other forms of support, including holistic rehabilitation and reintegration programmes. In particular, children who have been living in areas under the control of such groups or who are otherwise suspected of having links with such groups, are critically vulnerable and subject to violence at multiple levels. They require specific protection and are entitled to individualised care and consideration.

This paper outlines the key legal, policy and operational principles that must be adhered to in the UN's system-wide response to this challenge. This includes improving system-wide coordination through the United Nations Global Counter-Terrorism Coordination Compact. It is not intended to be an exhaustive document, but rather, one that clarifies the vital elements that must be met by all UN entities in their support to protection, repatriation, prosecution, rehabilitation and reintegration efforts. This set of principles is particularly timely in light of the increasing demand for UN assistance in this context.

¹ This refers to women and children allegedly associated or affiliated with; or otherwise found to be accompanying individuals of United Nations listed terrorist groups.

Key Principles

- **All measures taken by Member States for the protection, prosecution, repatriation, rehabilitation and reintegration of women and children should be in compliance with their obligations under international law, including international human rights law, international humanitarian law, and international refugee law, as well as international standards and relevant Security Council resolutions. Relevant General Assembly resolutions must also be taken into consideration.** These latter include Security Council Resolution 2178, requiring Member States to develop prosecution, rehabilitation, and reintegration strategies for returning foreign terrorist fighters; Security Council Resolution 2396, highlighting that women and children are often victims of terrorist groups' actions and that Member State actions must adhere to international human rights law; and Security Council Resolution 2427, outlining protections for children affected by armed conflict, including that children linked with armed groups, and those whose who have committed crimes, should be treated primarily as victims.
- **Member States have primary responsibility for their own nationals.** They should ensure that their citizens suspected of having committed crimes on the territory of another Member State are treated in accordance with international law, including international human rights law, international humanitarian law, and international refugee law, including through the provision of consular assistance. Member States should also ensure that their nationals who are family members of suspected foreign terrorist fighters and do not face serious charges are repatriated for the purposes of prosecution, rehabilitation and/or reintegration, as appropriate.
- **The right to nationality is enshrined in the Universal Declaration of Human Rights and in numerous treaties ratified by many States.² Safeguards and processes that protect people from becoming stateless must be in place.** All individuals have the right to a name, an identity and a nationality, and arbitrary deprivation of nationality is prohibited under international law. Pursuant to some of these treaties, women should have the right to bestow their own nationality onto their children. Additionally, Member States should accept their nationals and children born to their nationals, grant those children nationality, and take actions to prevent them from becoming stateless. Member States should ensure women and children have appropriate documentation, can return, and in no circumstances, by act or omission, implement policies that effectively render children stateless.

² The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The issue of nationality is also regulated in the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons and the Convention relating to the Status of Refugees. An explicit and general prohibition on the arbitrary deprivation of nationality can be found in numerous of these instruments, the UDHR and General Assembly resolution 50/152.

- There must be **individual assessment and screening to appropriately assess each case and determine each person’s affiliation and/or victimhood**, while taking into account age and gender considerations. The Counter-Terrorism Committee Madrid Guiding Principles and its Addendum provide practical and policy guidance in this regard.³
- **Children should be treated first and foremost as victims and their treatment must be determined with the best interests of the child as the primary consideration**, in line with the Convention on the Rights of the Child. This includes actions taken by both public and private actors and in legislative, judicial, and administrative decisions. Children have special rights and protections that apply in all situations, irrespective of the children’s age, sex, or other status, including actual or perceived family or personal affiliation.
- Where women or children are suspected of having committed criminal acts, **due process and fair trial standards, including the presumption of innocence and the right to an appeal must be adhered to, with the appropriate consideration for age and gender**. When relevant, these women and children should be repatriated to the countries of nationality for judicial proceedings.

Humanitarian and Human Rights Principles⁴

- **Humanitarian assistance must be provided without discrimination** and according to the principles of humanity, neutrality and impartiality, including to all individuals irrespective of their perceived status or affiliation.
- **Humanitarian actors should have timely and unimpeded access to people in need** so that they can provide humanitarian assistance, particularly in conflict zones. This requires UN humanitarian actors and their humanitarian partners to have the ability to provide assistance and protection in an impartial, neutral and independent manner, and engage with all relevant parties to conflict to reach those in need.
- International human rights law provides that **everyone has the right to return to his or her country of nationality**. Any limitations to that right must be lawful, pursuant to a legitimate aim and necessary and proportionate to achieve that aim

³ <https://www.un.org/sc/ctc/news/document/s-2018-1177-addendum-guiding-principles-foreign-terrorist-fighters-2018/>

⁴ Please also refer to “[Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters](#)”, a 2018 publication by the UN Inter-Agency Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism and the [UNODC handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System](#)..

- **Repatriation of women and children must not come at the cost of violating the principle of non-refoulement.** Member States are obliged not to expel, return, extradite or otherwise remove a person to another State, when there are substantial grounds for believing that they would be at risk of being subjected to serious violations of human rights, including torture or cruel, inhuman and degrading treatment or punishment.

Specific Principles regarding the Rights of Children

- **The best interests of the child must be given primary consideration in all actions concerning them, including in relation to maintaining family unity.** Member States, with United Nations support, should implement Best Interest Assessment/Best Interest Determination (BIA/BID) processes with key safeguards in place, to determine whether repatriation or other actions are in the best interest of a child. Member States should seek the free and informed consent of parents before separating children for repatriation, unless separation is decided to be in the child's best interests.
- **Alternative care arrangements should be explored for situations in which children cannot remain with their parents or where it is not in the best interest of the child to remain with his or her primary care givers.** Family-based interim care arrangements should be prioritized, followed by community-based interim care arrangements.
- **Children linked with United Nations listed terrorist groups should only be detained as a measure of last resort** and for the shortest appropriate period of time. Alternatives to detention for children should be prioritized. Children should be detained separately from adults unless otherwise in their best interests and to prevent family separation.
- **Rehabilitation and reintegration of children linked with United Nations listed terrorist groups must be prioritized,** in line with the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. This includes access to age and gender appropriate services, including mental health and psychosocial support, education and legal assistance.
- **Member States must respect the privacy and confidentiality of children with links to United Nations listed terrorist groups.**
- **Member States should prevent the further stigmatization of children with links to United Nations listed terrorist group where possible.** In the absence of criminal evidence, Children should not be placed on watch lists or in other databases based on family affiliation or alleged affiliation with an armed group.

Specific Principles regarding the Rights of Women

- **Women can be both facilitators, supporters, perpetrators of crimes and victims of violence, abuses and other human rights violations.** Women **suspected of committing crimes should be prosecuted in a fair and non-discriminatory manner** within the framework of international standards, while given the support they need as victims.
- **Criminal justice processes must be gender responsive**, and address the needs of women, in particular young women, including within detention, interrogation, as well as witness protection programmes. Such **gender-sensitive practices** are key to effectively protecting women who are victims of sexual and gender-based violence from secondary victimization and stigmatization.
- **Women survivors of violence, abuses and other human rights violations** must be provided with all possible support. **The rehabilitation and reintegration of women requires tailored strategies** to address their specific needs and minimize risks leading to stigmatization and exclusion.

Principles related to the prosecution of Women and Children

- **Criminal responsibility is individual. Nobody should be detained or prosecuted for crimes committed by family members.** Many women and children come into contact with United Nations listed terrorist groups through family links and should be treated in accordance with the principle of the presumption of innocence. It should not be assumed that such women and children are members of these groups or have carried out acts in support of such groups, and such a determination should be made on a case-by-case basis.
- **There should be a presumption against the prosecution of children and they should be treated primarily as victims.** Children should not be detained or prosecuted solely for their association with or membership in any armed group, including designated groups. Non-judicial measures should be preferred in relation to children accused of any crimes in relation to terrorist groups. Children's best interests require prioritization of rehabilitation and reintegration in any contact they have with the law.
- **Any prosecution of children should respect internationally recognized standards of juvenile justice**, including in relation to minimum age of criminal responsibility, which the Committee on the Rights of the Child has recommended to be no lower than 12 years of age, preferably between 14 and 16. Justice procedures must consider the age of the child at the time of the alleged criminal act. Children over the age of minimum criminal responsibility may be liable for certain actions, but only under internationally recognized juvenile justice

and fair trial standards applicable to children.⁵ Individuals must never be subject to the death penalty or life imprisonment without parole for acts they have committed while a child.

- **Juvenile justice systems should be used for children who have reached the minimum age of criminal responsibility, as opposed to military or special security courts, including for charges of terrorism or national security offenses.** Domestic legislation should not define different (lower) ages of criminal responsibility solely for terrorism related offences or for offences against national security.
- **Torture in all forms is prohibited, as in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.** Information obtained through the use of torture shall be inadmissible as evidence.

Operational Principles for the coordination of assistance to Member States

- UN agencies should deploy an approach based on international law, including international humanitarian law, international human rights law and international refugee law, and the principles contained in section (B) above, to strengthen legal frameworks, social service work forces and systems, and justice systems to support children and families affected by conflict on an equitable basis, and to facilitate assistance to governments on repatriation, reintegration, and other relevant services and activities in line with their mandates. Their approach should also be in accordance with the United Nations regulations, rules, policies and procedures.
- Requests by Member States for support from the United Nations on the above can be sent directly to any relevant UN agency. Requests by Member States for in country assistance, technical support or advice can be made directly to respective UN Agencies either directly or through the Resident and Humanitarian Coordinators. The Coordination Committee of the Global Counter Terrorism Compact should also be kept informed of these requests and subsequent follow-up activities to ensure system-wide coordination, enhance the coherence and resources available to address the full range of Member State needs, and facilitate reporting on the Organization's work to support Member State implementation of the General Assembly's Global Counter Terrorism Strategy.
- At the global level, requests can also be sent, to the Under-Secretary-General for Counter-Terrorism, acting in his capacity as Chair of the Coordination Committee of the United Nations Global Counter-Terrorism Coordination Compact, who will then disseminate this to all relevant United Nations entities, as well as notify UN in-country leadership; bearing in mind the United Nations Children Fund (UNICEF)'s critical role with regards to children-

⁵These include the Convention on the Rights of the Child, the Beijing Rules, the Havana Rules, the Riyadh Guidelines and the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and other key principles.

related issues and well as United Nations system entities and development partners already engaged in-country.

- In responding to requests from Member States for practical assistance, the United Nations will work in consultation with relevant Member States and humanitarian organizations, building on the work being done by relevant United Nations entities, in particular those with field presences in the respective Member States. At the operational level, decisions about the scope of possible assistance will be made by relevant agencies and partners, consistent with their mandates, resources, programmes of cooperation and working modalities.
- Coordination within the United Nations system, both on the ground and at the HQ-level, is of paramount importance, in particular, to prevent duplication of work. Where necessary and relevant, Resident and Humanitarian Coordinators, and relevant Special Envoys and Special Representatives should be informed and may also be involved, so as to facilitate United Nations support. Coordination and collaboration with humanitarian partners should be prioritized for effective advocacy and engagement to repatriate and support these individuals and should not compromise the principles of humanity, neutrality, independence, and impartiality.
- Concerned States have the primary responsibility to design and carry out repatriations in line with international law and in full respect of the principle of non-refoulement. On an ad-hoc basis, the International Committee of the Red Cross (ICRC), may facilitate repatriations in line with its mandate and working modalities. States that wish to seek that facilitation role should reach out directly to the ICRC with a specific request. Prior to responding to the request, the ICRC will discuss its content with relevant authorities and assess its feasibility (including logistical/security aspects and compatibility with IHL and humanitarian principles).
- The United Nations system will also support the requesting Member State in its responsibility to provide such returnees with the necessary rehabilitation and reintegration support. This includes access to individualised age- and gender-appropriate services, including medical care, mental health and psychosocial support, education and legal assistance, with privacy and confidentiality of the utmost concern. All United Nations assistance and support should adhere to the UN Human Rights Due Diligence Policy.
- The Coordination Committee of the United Nations Global Counter-Terrorism Coordination Compact, working closely with the Executive Office of the Secretary General, will ensure enhanced coordination and information sharing among United Nations entities to strengthen the coherence of UN system-wide response to the protection, repatriation, prosecution, rehabilitation and reintegration of women and children linked with United Nations listed terrorist groups.